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AN

HISTORICAL VIEW

OF THE

GOVERNMENT OF MARYLAND,

V. I. 1831  
FROM ITS

COLONIZATION TO THE PRESENT DAY.

BY JOHN V. L. McMAHON.

VOL. I.

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DISTRICT OF MARYLAND, ss.

*Be it remembered*, That on this twelfth day of February, in the fifty-fifth year of the Independence of the United States of America, John V. L. McMahon, of the said district, hath deposited in this office, the title of a book, the right whereof he claims as author, in the words following, to wit:

"An Historical View of the Government of Maryland, from its Colonization to the Present Day.—By John V. L. McMahon.—Vol. I."

In conformity to an Act of the Congress of the United States, entitled, "An Act for the encouragement of Learning, by securing the copies of Maps, Charts, and Books, to the authors and proprietors of such copies, during the times therein mentioned," and also to the Act, entitled, "An Act supplementary to the Act, entitled, An Act for the encouragement of Learning, by securing the copies of Maps, Charts, and Books, to the authors and proprietors of such copies during the times therein mentioned, and extending the benefits thereof to the arts of Designing, Engraving, and Etching historical and other Prints."

PHILIP MOORE,

*Clerk of the District of Maryland.*

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## PREFACE.

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PREFACES were formerly called "apologies to the reader:" and although they have changed their name, they have not lost their original nature. They assume, for the reader, that he is ignorant of the subjects upon which the writer professes to instruct him; and for the writer, that he has enjoyed means of information denied to the reader. The writer of this work has no apologies to make, on its behalf, for any such assumptions. If it presupposes, that the people of Maryland require information upon its topics, it proceeds only upon what has been universally admitted with regret. If it implies that its writer has any peculiar knowledge to impart, he can at least say, that he has drawn it, principally, from records, and other memorials, of which the moth and rust, those decayers of all earthly things, have been the sole proprietors for more than half a century. If it claims for him competency to the task he has undertaken, it only arrogates the liberty of attempting, what all have declined, and many have pronounced impracticable.

Like most other undertakings, the design of this work, as now accomplished, extends far beyond the original purposes of its author. At a very early period of his professional life, he began the task of collecting and arranging the materials for an Elementary Treatise upon the Laws and Institutions of the State. When this design had nearly progressed to accomplishment, our Legislature was pleased to direct a general revision of the laws, which, under the





extensive powers confided to the revisors, might have resulted in the establishment of a new code. With such a result in prospect, the further prosecution of his original purpose seemed useless; but as there was reason to believe that the revision would effect no material change in the institutions, through which the public authorities were exercised, it still left open to his views the wide field of *public relations* under the State Government. The design was, therefore, bounded to the examination of these, and to the investigation of the institutions of the Colony, so far as it might be necessary to illustrate the existing State establishments. In this form, it received the sanction and patronage of the Legislature, in the winter of 1826—27; but it again became the sacrifice of unexpected occurrences. Thrown suddenly into the midst of the engrossing cares and labors of public life, at the very moment when he was about to enter upon its execution, the writer yielded it to the necessities of the moment, as one would his first-born. The hour of retirement from public employments at length arrived; and the field of his contemplated exertions was still unoccupied. Yet with the first fervor of the enterprise, had passed away much of the energy so necessary for its accomplishment: and it might still have slept, but for the promptings of a soft and gentle monitor. It was easily revived; for authors have their first loves, as well as lovers, to which, with all that time and distance can effect, the “untraveller heart” will still return, and cling the closer for the separation of the past.

Of a design thus formed and quickened into life, the writer now presents *the first fruits*. If, to the reader, they bring neither interest nor information, where both were promised, let him remember, that to the writer they are associated with the cherished projects of his youth; and if he has been deluded by the hope of affording pleasure or instruction to others, where he has found both, he is only the victim of a common error. If he could but hope to effect one purpose, he would ask no greater boon. The





history of his native State abounds with recollections that would adorn any people: her sons have been conspicuous for every talent and virtue that lends dignity to human nature; and her institutions dispense freedom, security, and happiness to the citizen. Yet where are her memorials of the past, to teach whence sprang the enjoyments of the present; and to give value and permanence to her liberties, by the knowledge of the perils through which they have gone? All have passed, or are passing into oblivion; and after the lapse of two centuries, we are yet a new people, with scarcely a single monument or cherished remembrance of the past, around which State pride may cling. The originals of many of our Institutions, are lost to public view: the spirit, nay, the very form of others, are scarcely understood; and our Constitution and laws have almost become a mystery, to be solved only by the oracular responses of the favored few, who have had the means and leisure to explore them. Intent upon the present, we seem to have forgotten that the great secret of national advancement consists in the cultivation of a proper national pride; and that the elements of this pride exist in the associations of a nation's history, and in the devotion to her institutions which springs from a knowledge of their nature and ends. By these the citizen is identified with his country, and subjected to the influence of feelings and impulses, which, in times past, have made men heroes and patriots, and conducted whole nations to freedom. The welfare and advancement of the State, are thus made objects of individual interest; and in the engrossing desire to advance its character, all petty jealousies and rivalries are merged. If such is the natural result of a proper State pride, where is the State whom it behooves more sedulously to cultivate it, than that in which we dwell? If the writer's humble efforts can contribute in any degree to promote it, by rendering the people of Maryland more familiar with its history and institutions, or by tempting others of more ability to improve the beginning he has made, his highest aims are reached.





It is unnecessary to detail the plan of this work. It is its own interpreter: and to explain its purposes in advance, is like detaining the traveller upon the threshold, to describe to him the mansion he is about to enter. Prefatory sketches are, commonly, but so many glimpses of *the promised land*, to tempt the reader to the travel: but there is a better lure, in the impulses of unsatisfied curiosity. There is at least a greater probability in the latter case, that the reader will get beyond the preface. In this volume, no attempt has been made to investigate the History and condition of the Indians of Maryland: but the writer is not without hopes, that he will be enabled to attach to the second volume a memoir of some interest upon this subject. In the Appendix to the second volume will be found a list of the officers who have filled the higher provincial and State offices, extending from the colonization to the present day, and designating the times of their appointment and removal: and a series of statistical tables, relative to the population, commerce, and manufactures of the State, and of its principal towns. All else of the plan, that is not developed in this volume, will appear in proper season.

Whatever may be thought of the plan, or of the manner of its execution, the reader, in passing upon them, will call to mind the intrinsic difficulties of the attempt. To sketch the history and describe the institutions of a people, is no light undertaking, even when the materials are abundant, and are already collected for reference. Yet when it is accomplished with such aids, it is an easy and delightful task, in contrast with the labors of the present effort. In most of his researches, the writer has had no pioneer: and he has been compelled to rely principally, for the sources of his information, upon unpublished and imperfect records, the very perusal of which, if inflicted as a punishment, would be intolerable. Fortunately for him, the labor was alleviated by the kind attentions of the State Officers, having the custody of the public records, who were ever ready to





assist him in his researches and share his toils. Deeply sensible of these attentions, he cannot suffer the occasion to pass without thus publicly tendering his acknowledgments for them, to Mr. Ridgely, the State Librarian, Mr. Brewer, the Register of the Land Office, Mr. Pearce, the late Clerk of the House of Delegates, and Mr. Murray, the late Clerk of the Council. To his friend, Mr. Jonas Green, of Annapolis, he is indebted, as the reader will perceive, for some of the most valuable information which this work embodies; information furnished with that peculiar kindness of manner, which strives to break the weight of obligation, by seeming rather to be the receiver than the giver of favors. To Mr. James Carroll, and Mr. Fielding Lucas, Jun., of Baltimore, he is indebted for several rare works, which he had occasion to consult in the course of his researches: and Mr. Carroll also kindly submitted, for his perusal, some very interesting memoranda, of his own collection, in reference to the Provincial Government. Mr. Horatio Ridout of Anne Arundel, as soon as he was apprised of the writer's intentions, transmitted to him a record of all the correspondence of Governor Sharpe, during his long administration of this Province. This record was made by the father of Mr. Ridout, the acting Secretary of Governor Sharpe, and is full of interesting details, relative to the internal polity of this Province, and the operations of the colonies generally, during the French war, which was closed by the treaty of Paris. Unfortunately it was not received, nor was the writer aware of its character, before that part of this work which particularly relates to Gov. Sharpe's administration, had gone to the press; but he still hopes to avail himself of some of its most interesting portions, in the succeeding volume. None but those who have engaged in such undertakings as the present, can know how grateful such attentions are; and none but the ungrateful can fail to remember, and acknowledge them.

Attached to a profession upon which he depends for support, the writer has been compelled to make the pur-





suits of this work, in reference to his general employments, what Madame De Stael has said love is in the history of man, a mere *episode*. But, to accomplish this in the few months which have elapsed since it was commenced for publication, he has found it necessary to devote to it many of the hours due to sleep and exercise, and often to bring to the task a languid and exhausted frame. Yet even with all the inequalities and imperfections which such a manner of writing is calculated to impart, he was unwilling to abandon a design which could not otherwise have been effected.

Alike its author, this work has had no patron to usher it into public view, and it must make friends as it goes. The generous mind will appreciate its difficulties, and make due allowance for its imperfections. To those who look upon the approbation of others' efforts as the office of inferior minds, and the art of finding faults as the evidence of their own superiority, the author has but one admonition to give. If respected, it will relieve him from that class of critics, who, like certain insects, annoy more by their buzz than their sting. It is couched in the language of an old *Maryland* poet;

Let critics, that may discommend it,  
——— mend it.

BALTIMORE, *February 12th*, 1831.





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# INTRODUCTION.

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### OF THE GRANT AND TERRITORIAL LIMITS OF THE STATE OF MARYLAND.

Original extent  
of the province.

THE Province of Maryland, as granted by Charles I. to Cecilius, Baron of Baltimore, included under the descriptive terms of the grant, "All that part of the peninsula or chersonese, lying in the parts of America between the ocean on the east, and the bay of Chesapeake on the west, divided from the residue thereof by a right line drawn from the promontory or head land, called Watkin's Point, situate upon the bay aforesaid, and near the river of Wighco on the west, unto the main ocean on the east, and between that boundary on the south, unto that part of the bay of Delaware on the north, which lieth under the fortieth degree of latitude, where New-England is terminated; and all the tract of land within the following limits, to wit, passing from the said Delaware Bay in a right line with the degree aforesaid, unto the true meridian of the first fountain of the river Potomac, thence running towards the south unto the further bank of the said river, and following the same on the west and south, unto a certain place called 'Cinquack,' situate near the mouth of said river, where it empties into the aforesaid bay of Chesapeake, and thence by the shortest line unto the aforesaid place or promontory, called Watkin's Point." (1)

(1) This description of the bounds of the Province, was manifestly framed by the aid of the map accompanying that rare work, *Smith's History of Virginia*, which shows the true position of some of the places designated in the charter by names long since lost. On examination of that map, it will be found that the river Wighco, there located, is the river Pocomoke of the present day; and that the place called "Cinquack," corresponds to what is now called "Smith's Point." This place has, indeed, been differently located; but it is expressly acknowledged to be Smith's Point, by the compact of 1755.





It will, at once, be perceived, that these boundaries of the Province are essentially different from those which, at this day, define the limits of the State; and in contrasting them, it will be seen with regret, that Maryland has been deprived of some of the fairest portions of her original territory. It is not our purpose to enter into a minute detail of all the circumstances which have occasioned this loss. The full narration of these belongs, peculiarly to the civil history of the State. For the purposes of this work, it will be sufficient to enquire into the causes of the grant, the circumstances under which it was made, and the prominent causes and results of the territorial controversies to which it has given rise. A brief view of these is necessary, to exhibit to the reader the present contracted limits of the State, and to account for their incongruity with the limits assigned by the charter.

The antecedent grants to the London and Plymouth Companies.

The claim of the English crown to the continent of North America, was founded upon the discovery and partial exploration of its coast, by Sebastian Cabot, in the year 1498. The first efforts at a settlement upon this continent which were made under the authority of the English government, were unsuccessful and discouraging. The ardor for voyages of discovery and for schemes of colonization, was much abated by the unsuccessful attempts of Gilbert and Raleigh. The disastrous result of the expeditions set on foot by them, was well calculated to enhance, in general estimation, the difficulties and dangers incident to such enterprises: and the discoveries which had been made under their conduct, presented no object sufficiently alluring, to tempt even the bold and adventurous to encounter the hazard and expense of a similar attempt. About the commencement of the seven-

between the States of Virginia and Maryland, relative to the navigation of, and jurisdiction over, the Chesapeake Bay, and the rivers Potomac and Pocomoke, which will be seen in detail at the conclusion of this chapter. In passing, we cannot refrain from expressing the regret that this work of the celebrated John Smith is so little known to the citizens of our State. It contains an account of his exploration of the Chesapeake Bay and the country adjacent, full of interesting details, and illustrated by a map, which, as to the Bay, and the country adjacent to it, and the mouth of its tributary streams, even to the mouth of the Susquehanna, may safely challenge a comparison in point of accuracy, with the maps of this day.—It was republished at Richmond, in 1819.





teenth century, the spirit, which had so long slumbered, began to revive, and upon the accession of James I. to the English throne, with whom the establishment of colonies appears to have been a favourite measure, an application was preferred to him, by a number of persons of great wealth and influence, for permission to plant colonies within the limits of Virginia, that being then the name applied by the English to the whole continent. Their application was successful, and accordingly in 1606, they were empowered by a grant from him, to make settlements between the 34th and 45th degrees of North latitude. The association under whose conduct these settlements were to be made, was, at the instance of its members, divided into two companies, the first of which, called "*The London Company*," was required to make its settlements between the 34th and 41st degrees of North latitude, and the second, which was called "*The Plymouth and Exeter Company*," was permitted to make its settlements between the 38th and 45th degrees, but no settlement was to be made by either of them, within one hundred miles of any prior settlement of the other. (2)

New, and exclusive grant to the Plymouth Company.

The latter company, under whose auspices the second or Northern Colony was to have been planted, after two unsuccessful attempts, which seemed to enhance the difficulties and diminish the benefits of the enterprise, were content for some time after their grant, to abandon their original design, and to confine themselves to the benefits of a few voyages to it, for commercial purposes. The conduct of one of these voyages was entrusted to the celebrated John Smith, who had already acquired so high a reputation by the enterprise, perseverance and ability which he had displayed, in the establishment and sustention of the Southern Colony. His sagacity soon perceived the extent and fertility of the resources of this region, hitherto deemed barren and inhospitable, and his glowing representations of its general aspect and its capacities, were such as to procure for it from prince Charles, the flattering appellation of "New England." (3) Sustained, as

(2) This charter to the Northern and Southern, or first and second Colonies of Virginia, was granted on the 10th of April, 1606, and may be seen at large, in 1st Hazard's State Papers, 50 to 58.

(3) This is the account of the origin of the name given by Chalmers in his Historical Annals: but Smith, in that curious and interesting paper, en-



they were, by his well earned reputation, they contributed largely to dispel those unfavourable notions, as to its soil and climate, which had been propagated by those who had made the former unsuccessful attempts at its settlement. At this time, the commerce of this region was gradually increasing, and the French and Dutch, and even the Southern Company, were labouring strenuously to engross it for themselves, or at least to divide its benefits with the Northern Company. Roused to a sense of the consequences of these efforts, the latter company asserted its exclusive right to the trade of New England, and endeavoured to fortify its claim by a new grant. Their application for this grant, although strenuously resisted, was ultimately successful: and in 1620, they and others, their associates, were incorporated by the name of "*The Council of Plymouth for the planting and governing of that country called New England,*" and in this corporate capacity, were invested with the rights of soil and government, over all the territory on the continent of north America, lying between the 40th and 48th degrees of north latitude, and the exclusive privilege of fishing and trading therein." (4)

The settlements within the Plymouth Grant, anterior to the Charter of Maryland.

This was the outstanding grant from the English crown, of the territory immediately North of the northern limits of Maryland, at the time of the grant to Lord Baltimore. Its southern limits, it will be perceived, began at the degree which constituted the northern boundary of Maryland: and with this common boundary so well defined, no room was left for controversy, except as to the location of the degree. At the time of the grant to Lord Baltimore, the only settlements which had been made within New England, were those of New Plymouth and of Massachusetts Bay. The New Plymouth Colony consisted of emigrants from Holland, who had removed from England but a few years before, because of the peculiar religious opinions which they entertained, and which acquired for them the name of *Brownists*. It was their original design to have made a settlement in Virginia, (as the site of the Southern Colony was

titled "Smith's description of New England," informs us, that the name was bestowed upon it by himself.

(4) This charter to the Plymouth Company, will be found in Hazard's State Papers, 103 to 118.





then called,) under an extensive grant, which had been made to them by the Virginia Company. Accident cast them upon the New England coast, where, from the period of their arrival, in 1620, until 1630, they remained, without any other title to the soil than that which mere occupancy gave them, exhibiting in the organization of their society, a complete exemplification of that social compact, which has usually been deemed a philosophical fiction. In the latter year they obtained a grant from the Council of Plymouth, under which they were living when Maryland was granted. The Massachusetts Bay Colony was planted in 1629, under a grant from the Plymouth Company, of all the lands between the Merrimack and Charles rivers, which was confirmed and extended by a charter from Charles I. in 1628. (5) The origin and establishment of these Colonies is already matter of history, and it will, therefore, suffice to say, that confined, as they were, at the time of Lord Baltimore's grant, within what are the limits of the present State of Massachusetts, they were so remote from the common boundary that no dissensions about that boundary ever arose between the Plymouth Company or its grantees, and the Colonists of Maryland. The rights of that company had been long extinct, and several distinct colonial governments had been carved out of them, before the proprietary of Maryland was involved in contests about his northern limits: and all of these arose from grants subsequent to his own.

The several charters to the London Company, and their revocation by the crown.

We have seen, that under the first charter from king James, the first or Southern company, which was called the London Company, was permitted to make its settlements any where between the 38th and 45th degrees, subject to the restriction above mentioned, as to the contiguity of their respective settlements. In 1609, this company obtained from king James, a new charter, which severed it from the Northern Company, and incorporated its members and others, whom they had received as associates, under the name of "*The Treasurer and Company of Adventurers of the City of London, for the first Colony of Virginia,*" and to them were granted the rights of soil and government, in all the

(5.) These grants to the Plymouth and Massachusetts Bay Colonies, will be seen in 1st Hazard's State Papers, 298 and 239.





lands north and south of Cape Comfort, to the extent of two hundred miles, in both directions. A third charter was granted in 1611, which did not vary these limits on the main land. (6) Under these charter governments, the Colony of Virginia remained until the year 1623, when, in consequence of the refusal of the company, to surrender their charters, and to accept in their stead, such a charter as the king might be pleased to grant, a *quo warranto* was issued, on which judgment was given against the company, its charters annulled, and the rights granted by them revested in the crown. From that period, Virginia became what was termed "A Royal Government," and as such, there was an inherent right in the crown, to alter and contract its boundaries, or to carve new and distinct territories or governments out of it, at its pleasure. Yet, incontestible as this right was, it will be seen that the exercise of it, in granting the province of Maryland, was the source of much dissatisfaction amongst the colonists of Virginia; and that at one period, attempts were made to assert and maintain the existence of the charter government, notwithstanding the judgment on the *quo warranto*, for the sole purpose of reclaiming the territory of Maryland, as lying within the old charter limits.

Clayborne's settlements.

Although the Colony of Virginia, as it was re-vested in the crown, retained its ancient limits, fortunately for the security of Lord Baltimore's grant, no settlements had been made antecedently to it, upon the lands included within his grant, either under the authority of the crown or of the charter governments, except those made by a small colony which was seated on Kent Island, in the Chesapeake Bay, by the notorious William Clayborne. Of the character and temper of this man, it is difficult for us at this day to form any just conceptions. The accounts which we have of him, have been transmitted to us by writers, who seem to have had no end in view, but to lavish upon him the most opprobrious epithets. The name of Machiavel has never been more shocking to moralists and white-washed politicians, than was that of William Clayborne, to the first colonists of Maryland. Even historians familiarly call him the evil genius of the colony, and so he

(6) These charters of 1606, 1609 and 1611, are given at large in Hazard's State Papers, 50, 53 and 72.



unquestionably was, if his unceasing efforts to maintain by courage and address, the territory which his enterprize had discovered and planted, entitled him to the name. A reference to the early contests of this man with the proprietary and his officers, abundantly demonstrates that he stood not alone in them, and that the government of Virginia, fearing to put itself in direct opposition to the will of the king, and to his command to give Lord Baltimore all lawful assistance in the colonization of Maryland, was yet muttering dissatisfaction, and secretly instigating Clayborne to those acts of violence, which ultimately caused his attainder and expulsion from the province. That Clayborne was possessed of courage, enterprize and talents, cannot be doubted. That he added to these, many virtues which alleviated the harsh and rugged character ascribed to him by the writers of that day, is highly probable. The records of Virginia, and the recitals of the license to trade, granted him by the crown, inform us that he was, at the time of its grant, the Secretary of State for the government of Virginia, and also one of its council. (7) He appears to have directed his attention to the commerce of the Chesapeake Bay, for some years before he made any settlements within it: and his first expeditions were conducted entirely under the authority of the English government. During the several years, 1626, 1627 and 1628, he received from that government licenses to trade, under which he was authorised to discover the source of the Chesapeake, or any part of the government of Virginia, from the 31th to the 41st degrees of north latitude. Not content with this, he obtained from king Charles I. in May, 1631, a license to trade in all the seas, coasts, harbors or territories, in or near to those parts of America, for the sole trade with which there had been no previous grant from the crown. Under this license, and one shortly afterwards obtained from the governor of Virginia, his settlements upon Kent Island were made; and being so made, they were subordinate to and dependent upon the government of Virginia. They were not only regarded as planted under its autho-

(7) The recitals of his commissions as Secretary of State for the Colony of Virginia, granted in 1625 and 1627, speak of Clayborne as a *person of quality and trust*, and abundantly evidence the high estimation in which he was then held.





rity, but we are also informed that before Lord Baltimore's grant, they had even sent Burgesses to the Assembly of Virginia, (8) a privilege which they could not have exercised very frequently during the administration of governor Harvey, who ruled in Virginia, as did king Charles in the mother country, *without the aid of Assemblies*. (9)

Such were the origin, extent and condition of the English settlements, adjacent to or within the province of Maryland, when it was granted to Lord Baltimore. The causes of this grant, the circumstances which impelled Lord Baltimore to seek it, and the motives which induced king Charles to yield to his application, all serve to explain the grant itself, which was in its general character peculiarly favourable, both to the proprietary and the colonists, and which embodied in it provisions for the security of the political and civil liberty of the latter, in direct conflict with the known temper of the English crown at that day. We naturally ask, whence came these peculiar features of the charter; and, therefore, the reply to this question makes a part of the history of the grant. The examination of these features belongs to another part of this work. At present, it is only necessary to enquire into the circumstances under which the grant was made, as explanatory of its character.

The grant of Maryland, and how obtained.

CECILIUS, Baron of Baltimore, to whom the charter was granted, was not the grantee for whom it was originally intended. The application for it came from, and the success of that application is due to, his father, George Calvert, with whom the design of obtaining and colonizing the province originated. He lived only to see all difficulties removed, to have all his wishes as to the terms of the grant complied with, and to leave as an inheritance to his heir, a title to it, based upon the highest moral considerations, and perfected in all but the legal forms. Calvert who was thus the

(8) Chalmers.

(9) This was certainly the general character and tendency of Harvey's administration, although, as is shewn by Mr. Burke in his History of Virginia, Robertson and other writers upon the affairs of that colony, were mistaken in supposing that no Assemblies were held during that administration. It appears that there were several sessions of Assembly during that period, at one of which there was a general revisal of the laws of the colony. Burke's History of Virginia, 2d vol. 41.





founder of the title, and fortunes of his family, was born in Yorkshire, in the year 1582. At an early age he became the secretary of Sir Robert Cecil, through whose influence and patronage he was made clerk of the Privy Council, and ultimately became secretary of state to James I. The latter office he resigned in 1624, because of his conversion to the principles of the Roman Catholic religion. Notwithstanding his avowal of these, and his resignation, he seems to have lost none of the royal favor which he previously enjoyed, inasmuch as he was continued in the Privy Council, and received in the succeeding year the honors of knighthood, with the title of Baron of Baltimore, in the kingdom of Ireland. He had represented Yorkshire in Parliament, and was, at the time of receiving knighthood, the representative of the University of Oxford. (10) During his secretaryship he obtained a grant of the province of Avalon, in Newfoundland, where he made some efforts at a settlement, which, although they did not answer his expectations, instead of repressing his ardor for projects of colonization, had only the effect of directing his enterprising spirit in search of some more favorable location. Animated by this desire, he visited Virginia, and his sagacity at once perceived the advantages which were likely to result from settlements upon the Chesapeake Bay, and the facilities for their establishment presented by the adjacent country, of which the colonists of Virginia had availed themselves only, by the establishment of a few trading houses. (11) On his return

(10) For these details connected with the History of the Founder of Maryland, see Chalmer's Historical Annals, and Bozman's Introduction to the History of Maryland, 231 to 234.

(11) The purposes of his visit to Virginia do not distinctly appear. If he had any views as to a permanent settlement within Virginia, they were all frustrated by the requisition made of him by the Assembly of that colony immediately upon his arrival there, that he should take the oaths of allegiance and supremacy, the latter of which, as requiring his acknowledgment of the King as the head of the church, was inconsistent with his peculiar religious tenets. It was therefore promptly refused. It is said by Anderson, on the authority of Keith, that he intended to retire with his family to some part of Virginia, that he might there enjoy the free exercise of his religion: but that in consequence of the opposition made to him because of his religious tenets, he left it to explore the Chesapeake Bay in search of a settlement, and finding the country adjacent admirable adapted to his purposes, and as yet unsettled, he returned instantly to England to procure the grant of it. 2 Burke's His-



to England, he preferred his application for the grant of the province of Maryland, and sustained, as it was, by the considerations of distinguished services, untiring enterprise, and great moral worth, it was readily acceded to by the pliant king Charles, who never knew how to refuse the requests of favorites. It has been inferred by some, from the tenor of the character itself, and the extreme care with which the rights of the proprietary are guarded by it, whilst the prerogatives of the crown and the eminent dominion of the mother country, are almost as cautiously excluded from view, that it was the work of Calvert himself: but, be that as it may, there is but little doubt that the facile Charles permitted him to dictate its terms. Early in 1632, and when his charter was just ready for its passage under the great seal, he died, leaving the fruition of his grant to his son and heir Cecilius Calvert, to whom the charter of Maryland was finally granted on the 20th of June, 1632.

The various sources of the territorial controversies in which the proprietaries of Maryland were involved.

This brief view of the circumstances under which the grant was made, will conduct us at once to the prominent causes and results of the territorial controversies to which the charter has given rise. The prior establishment of the colony of Virginia, and the settlements of Clayborne;—the true location of Watkin's Point;—the settlements of the Swedes and Dutch upon the Delaware;—the grants to Penn,—and the designation of the first waters of the Potomac, as the common boundary, at which the Western and Southern boundary lines of Maryland unite, have all given rise to controversies conspiring in their results to reduce the province of Maryland to its present limits. These will be briefly considered in the order in which they have been enumerated, which is also the order of their origin.

Objections of the charter on the part of the colonists of Virginia.

The causes of the dissatisfaction of the colonists of Virginia with the grant to Lord Baltimore, have already been partially disclosed. The grant lay within the limits of Virginia, as established under its charter government, and when these charters were annulled, and it became a royal government, it continued to retain its ancient limits until the period of this grant. The government of Virginia had also from time to time exercised its jurisdiction over the countries,





adjacent to the Chesapeake Bay, in the grant of licenses to trade therein, and the growing and prosperous settlement of Clayborne upon Kent Island, which was in subjection to that government, was just unfolding the resources of this territory, when it was granted to Lord Baltimore. The colonists of Virginia, therefore, felt all the indignation which a people would naturally feel, whose enterprise had opened new sources of wealth, which were left open only until they began to realise all the hopes which they had awakened, and were then closed against them, in the very moment of fruition, whilst a more favoured people, who, in their opinion, *had borne none of the heat and burden of the day*, were seated, to their exclusion, in the midst of all the benefits of their discoveries. They saw, with deep regret, that they had been mere purveyors to the designs of the proprietary of Maryland, and with the feelings, which disappointment, in the moment of enjoyment never fails to excite, their imagination saw more in the advantages which they had lost, than they would have discovered in the actual possession and enjoyment of them. They, therefore, received with a very ill grace the command of their sovereign, to yield every facility to Lord Baltimore, in his project of colonization, and were determined to omit no efforts to reclaim the territory which they had lost. Hence, shortly after the grant, a petition was preferred to the king by the planters of Virginia, in which they complain "that grants have lately been made of a great portion of the lands and territory of their colony, being the places of their traffic, and so near to their habitations, as will give a general disheartening to the planters, if they be divided into several governments: and a bar be put to that trade which they have long since exercised for supportation and relief, under the confidence of his majesty's gracious and royal intentions towards them." This petition was finally acted upon in the star chamber in July, 1633, when it was adjudged by the Privy Council, that Lord Baltimore should be left in possession of this grant, and the petitioners to their remedies at law, if they had any such, and that in the mean time, free commerce between the two colonies should be permitted, and that they should keep up a good correspondence with, and should mutually aid each other as members of a common government. (12) A proceeding of the

(12) See this order in council at large in 1st Hazard 337, and Bozman 381, note 8, which recites the petition preferred by the planters of Virginia.





governor and council of Virginia very recently afterwards, is quite irreconcilable with these injunctions of the privy council, and forces upon us the conclusion, either that they were not then apprised of them, or were determined not to respect them. In March, 1634, a petition was preferred to them by Clayborne, in which he requests their advice as to the course he should pursue in his difficulties with Lord Baltimore. He apprised them that he and his colonists on Kent Island had been required, as residents within the limits of Maryland, to renounce that state of dependence upon, and subordination to the government of Virginia, in which they had hitherto lived. In their reply, the governor and council express their surprise that Clayborne should ever have proposed such a question. They remarked, that they saw no reason for surrendering their right to the Isle of Kent, or to any other territory formerly granted to their colony by his majesty's patent. "And, as" say they, "the right to my lord's patent is yet undetermined in England, we are bound in duty, and by our oaths, to maintain the rights and privileges of the colony. Nevertheless, in humble submission to his majesty's pleasure, we will keep a good correspondence with them, not doubting that they will not entrench upon the rights of his majesty's plantation." (13) Yet this decision of the Privy Council appears to have been acquiesced in for some time: and even when the proprietary was driven to extremities by the resistance of Clayborne; and the latter was expelled from the province, and attainted, no open effort was made by the government of Virginia to sustain Clayborne's claims. It is probable that this acquiescence was occasioned rather by the exigencies of the colony of Virginia, than by its respect for the will of the king. The condition of the latter from the year 1625, when it became a royal government, down to the year 1639, at which period Sir William Berkely became its governor, was truly deplorable. Throughout this interval it was in a great degree, under the uncontrolled sway of its governor and council. They legislated for it; imposed taxes upon it without its consent; disposed of the public property at their pleasure, and governed the colonists as a conquered and vassal people. (14) Harvey, their despotic governor, was at length recalled in

(13) Chalmers.

(14) It has already been remarked in note 8th to this chapter, that the



1638, and the government of the colony was committed to the mild and amiable Sir William Berkely, whose instructions required, and whose temper approved a much more liberal system of government. Yet delighted, as the people of Virginia were, with the substitution of Berkely for Harvey, the instructions to the former, enjoined restrictions upon their trade, in which may be seen the germ of the exclusive claim to the colonial trade ever afterwards asserted by the mother country, and the sources of much dissatisfaction to the colonists. (15) In the meanwhile the discontents of the mother country were momentarily increasing. Charles I. who had resolved to govern, without the aid of parliament, found it necessary to summon them again at a period when they served no other purpose than to hasten his downfall. In this state of things in the colony, and in the mother country, the malcontents of Virginia conceived the design of attempting to bring about the restoration of the old chartered government, and of thereby reducing the colony of Maryland under their dominion. Fortified by the opinions of some eminent lawyers, who held that the old charters of Virginia were still in force, notwithstanding the judgment on the *quo warranto* in 1624, and that therefore the charter of Maryland was void, they presented a petition to the House of Commons, in the name of the Assembly of Virginia, in which they prayed for the restoration of the ancient patents. This design was speedily contracted by the governor, council and burgesses of that colony, who, in their address to the king, expressly disavowed the petition which had been preferred in their names, expressed an earnest desire to remain under his immediate government, and remonstrated against the restoration of the charters. The king's reply of July, 1642, put to rest all their fears

writers who treat of the condition of the Virginia colony at this period, have generally been mistaken in supposing that there were no assemblies held in it during Harvey's administration. Burke has corrected their errors in this respect: yet it is manifest from Burke's account of the condition of the colony during that period, that they were not mistaken as to the general character of the administration. Throughout it, the government was rather one of proclamations, than of laws: and these proclamations of Harvey, not only assumed what probably belonged to legislation, but were regarded as having all its binding force.

(15) See these Instructions in Chalmer's Historical Annals, 132 and 33.





on this score. (16) From this period, until the assumption of the government of Maryland, by the Commonwealth's commissioners, these claims of Virginia appear to have slept. Whilst Maryland remained in the hands of these commissioners, amongst whom was Clayborne, the protector was urged by some of them, and their agents, to take its government wholly and forever out of the hands of the proprietary, and to re-attach it to Virginia as a legitimate portion of that colony. The reader, who desires to see the various objections which were urged against Lord Baltimore's patent at that day, and the correspondence by which these claims of Virginia were reasserted, will see them at large in Hazard's state papers, vol. II. 594 to 630, and Thurlow's State Papers, vol. V. It will here suffice to remark that the protector gave no countenance to these claims; and that they were at length extinguished by the surrender of the province of Maryland, in 1658, to Fendall, the proprietary's governor, and do not appear to have ever been revived. (17)

Clayborne's flight  
and attainder.

Clayborne's claims, although not of longer continuance than those of the colony of Virginia, were much more warmly upheld, and were productive of much more calamitous consequences to the province. We have already seen in what manner, at what time, and under what authority, his settlements were made, and that at the time of Lord Baltimore's grant they were subordinate to the government of Virginia. His petition to the latter in 1634, and their reply have already been noticed. That reply it will be remembered, although made some months after the adjudication of the privy council, overruling the objections to the grant, yet asserted the claim of Virginia to dominion over Clayborne's settlements, in the most emphatic terms. Animated by this, Clayborne, who

(16) See Chalmers, 133.

(17) The various negotiations for this surrender, and the articles of agreement by which it was consummated, may be seen in Council Chamber Records, Liber II. H. 12 to 20. The principal stipulations of the articles were for a general indemnity from the year 1649, for the payment of fees and taxes in arrear; for relief from the oath of fealty, in lieu of which the colonists were permitted to take and subscribe an engagement to submit to the authority of the proprietary, for the security of Acts or Orders of Assembly, passed since 1654, which were not to be declared void, because of any irregularity in the government, and for permission to the colonists to retain their arms.





seems not to have objected to the claim of sovereignty on the part of Virginia, under which his colony had grown up, continued strenuously to refuse obedience to the proprietary's demand of submission. In September, 1634, the proprietary gave orders to seize him, in the event of his refusal to submit; and after repeated efforts to rouse the jealousies of the savages, and to excite commotions in the province, he was at length obliged to fly from it to Virginia. Determined to maintain his possessions by force, and, if practicable, to drive the colonists from the province, he had fitted out an armed vessel to commit depredations upon their property; but the immediate capture of that vessel deprived him of his last resource, and left him no hopes of safety but in flight. In Virginia, he had reason to expect security, from his past connexion with its government: but he had scarcely taken refuge there, before Commissioners were deputed from Maryland to demand his surrender. Harvey, the governor of Virginia, of whom this demand was made, and who appears to have had some connexion with Clayborne's enterprises, was too critically situated, at that period, to avow the connexion, or to afford open countenance to his pretensions: but, under pretence of high respect for Clayborne's license from the crown, he declined surrendering him to the Commissioners, but sent him under their charges to England, to await the decision of the King. Being thus put beyond the reach of the proprietary, he was attainted, and his property seized as forfeit. (18) After his return to England, he petitioned the king for a confirmation of his former license to trade, for a grant of other lands adjoining Kent Island, and for the power to govern them. To the influence of Sir William Alexander, who was the king's Secretary of State for the kingdom of Scotland, when Clayborne's license was granted, and who was his associate in that license, may be attributed the king's order pending this petition. That order, after reciting the former license and its grants, sets forth that Lord Baltimore had notice of its existence, and that contrary to its injunctions he and his agents had possessed themselves,

His petition to the king in council, and the order in council thereon.

(18) Council Chamber Records: Assembly Proceedings, from 1636 to 1657, pages 26, 27 and 31. Bozman, 280 and 327. 2d Burke's Virginia, 41, and Chalmer's Annals, 210 and 232.



by night, of Kent Island, and had seized and carried away the persons and estates of its planters, and that the king had referred to the commissioners of plantations the enquiry into the truth of these allegations. It then concluded with a mandate to Lord Baltimore and his agents, enjoining them to permit the settlers on Kent Island, to enjoy their possessions in peace, until that board had acted upon the subject. In Clayborne's petition, which elicited this order, he represents to the king, that he had not only made settlements upon Kent Island, but that he had also, at the instance of the Indians, made a settlement and established a factory, on a small island at the mouth of the river, at the bottom of the bay, in the Susquehanna country, by which he hoped to secure the fur trade from the lakes of Canada; that the injunctions of his license to trade had been wholly disregarded by the agents of the proprietary: that his boats and goods had been seized, his men slain, and himself accused of crimes, and dispossessed, or about to be dispossessed of all his settlements. It then concludes with a prayer, that the king would grant to him his settlements on Kent Island, and in the Susquehanna country, and the adjacent territory southerly, for twelve leagues from the mouth of said river, down the bay, on each side, and northerly to the head of the river, and the great lakes of Canada.

The reference of this petition to the commissioners, was made in February, 1637, (old stile) and in April, 1638, they finally adjudicated upon it. This adjudication determined, that the right to all the territory within which Clayborne's settlements were made, was vested in Lord Baltimore; that no settlements ought to be made, or commerce carried on in it, or with it, without his license, and that no grant to it should be made to any other person. (19) From this period the claim of Clayborne does not appear to have been ever asserted before a proper tribunal; yet,

(19) See Clayborne's petition, and the order of the king in council thereon, in Council Records, Liber Council Proceedings, from 1636 to 1657—4 to 10, and in 1st Hazard's Collection, 430. The authenticity of these papers was denied by the Penns in their bill in chancery against Lord Baltimore, upon the agreement of 1732: but their genuineness is fully sustained by the facts set forth in Bozman, 338 to 342; and by the above order of the king pending the petition, which is extracted by Chalmers from the English Council Records.





although abandoned, it begat and nourished a deep rooted hostility to the proprietary and the colony, which never failed to manifest itself on every occasion. Having failed in his application to the king in council, he is, the next year, found in the attitude of a suppliant, to the governor and council of Maryland, praying for the restoration of his confiscated property. Even this request, the gratification of which would probably have operated upon Clayborne as a peace-offering, and which seems to have been due to him, from a regard to the circumstances under which his settlements were made, and that conviction of his title to them, under which he manifestly acted, was yet sternly denied. (20) Had it been granted, it is probable that he would peaceably and silently have submitted to the decision against him. Its rejection made him, at all after times, the determined enemy of the colony, and hence, from that period, he lost no opportunity of exciting disturbances within it. All his intriguing arts were put forth: and whilst the minds of the Clayborne and Ingle's rebellion. colonists were agitated, and restless, from a view of the commotions of the mother country, associating himself with a certain Richard Ingle, who had previously been proclaimed a traitor to the king, and throwing himself upon the restlessness and discontent which then pervaded the province, he at length succeeded in exciting a rebellion against the proprietary's government, so formidable and so unexpected, that the governor was obliged to abandon the government, and to flee to Virginia for protection, early in the year 1645. The powers of government were then assumed by him in conjunction with Ingle; nor were they regained by the proprietary's officers until the close of the year 1646; and perhaps, even then, more by the misrule of these confederates, than by the force which the governor could bring to bear upon them. The deplorable consequences of this insurrection are felt at this day, in the loss of many of the records of the Province. (21)

Proceedings of Clayborne and others, as Cromwell's Commissioners.

The commonwealth cause to which Clayborne inclined, being at length triumphant, he, as a reward for his early services in its behalf in the colonies,

(20) Council Proceedings, from 1636 to 1657, page 50.

(21) 2d Burke's Virginia, 112. Bacon's Preface to his edition of the laws, and Chalmers, 217.





was commissioned by the Council of State of the mother country to subjugate the province, whence, but a short time before, he had been driven as a rebel. This commission, in which Fuller and others were associated with him, was issued in September, 1651, and empowered them *to reduce and govern the colonies within the Chesapeake Bay.* (22) Virginia was soon reduced, and in July, 1652, Stone, the proprietary's governor of Maryland, acknowledged and submitted to the power of the commonwealth, and was permitted to retain and administer the government in the name of the keepers of the liberty of England. (23) In his hands it remained until July, 1654, at which time Cromwell's usurpation had commenced, when, after a spirited but disastrous effort on his part to maintain his power by force of arms, Stone was defeated and taken prisoner, and Clayborne and his associates assumed the rule of the province in the name of the protector, and appointed commissioners to administer it. (24) In April, 1658, the government was restored to the proprietary by treaty, and with this surrender the claims of Virginia and of Clayborne, were at once and forever extinguished. (25) No attempt appears to have been made to revive them after this period, and the restless Clayborne, dispirited and prostrate after a life of extraordinary vicissitudes, was no longer known in the affairs of the colony, and soon sank into that state *where the wicked cease from troubling, and the weary are at rest.*

Controversies  
with Virginia  
growing out of  
the settlements  
on the southern  
part of the Eastern  
Shore.

The claim of Virginia to the province of Maryland, being thus forever put to rest, the adjustment of the boundaries between the two provinces became the next source of contention. In all the grants of unexplored territory made by the English crown at that day, there is not one so precise and definite in its terms, nor one which is less susceptible of misconstruction, than that of the province of Maryland: and yet there is scarcely one which has given rise to more frequent, embittered and protracted

(22) See the instructions to these commissioners, in Hazard's Collection, 556.

(23) Chalmers, 221 and 222. Bacon's Preface.

(24) Stone was condemned to be shot: but the soldiers, by whom he was beloved, refused to carry it into execution. Bacon's Preface.

(25) See the articles of surrender in Council Chamber Records, Liber H. H. 12 to 20.



contests about its boundaries. It will, however, be perceived, that these controversies have not originated in the terms of the grant itself, but in claims adverse to the grant, unfortified indeed by principle, or any sound rule of construction, but in some instances sustained and promoted even by the crown. On the side of Virginia, there were but two unascertained points in its boundary line, and these were so described as to create no difficulty in their true location. The ascertainment of the first fountain of the Potomac and of Watkin's Point, was all that was necessary to render the southern and western boundary lines definite throughout. As the settlements of Virginia and Maryland were not extended to their western borders, for a long period after the establishment of these colonies, their respective rights to western territory were not drawn into question until the middle of the eighteenth century. The location of their boundaries near the sea-board, along which their respective settlements were rapidly progressing, soon became the subject of enquiry: and hence the claim of Virginia to the province was scarcely at an end, when fresh disputes arose as to the situation of Watkin's Point, upon which depended the true location of the boundary line between the Eastern shores of Virginia and Maryland. As early as 1661, a commission was issued by governor Philip Calvert, to Edmund Scarborough, John Elzey and Randall Rouell or Revell, which empowered them to make settlements on the southern parts of the Eastern Shore, and to grant lands on very favourable terms, to emigrants from the counties of Northampton and Accomack. Their offers to the emigrants appear to have been gladly accepted, inasmuch as the report of Rouell to the governor and council of Maryland, in the May following, informs us that at that early period after the commission, settlements had been made at Manokin and Annemessex, which then consisted of fifty titheables, and that the settlers had formed a treaty of amity with the emperor of Nanticoke. (26) The establishment of these settlements on the very borders of Virginia, and the inducements which they held forth to its inhabitants, naturally excited the jealousy of its government. Hence, about this period, their submission

(26) Council Chamber Records, Lib. H. H. 122, 137. Part II. 38, 39, 40, 163 and 164.





to the authority of Virginia was required by colonel Scarborough, for and on behalf of that government, and upon the refusal of Elzey, one of the commanders of these settlements, he was arrested at Accomack, by Scarborough, and released only upon a promise of submission, of an equivocal nature. (27) Scarborough's design was merely to terrify him into submission, and therefore, after exacting this equivocal promise, he avowed his determination to go up to the settlements for the purpose of exacting the same obedience of all, and declared he would put "*the broad arrow mark,*" upon the houses of all such as should refuse. Pursuing these intentions, he entered these infant settlements in a hostile manner, when, partly by persuasion and partly by force, he succeeded in bending the settlers to a partial compliance with his will, and to a temporary submission. In the mean while, the governor of Maryland had been apprised by Elzey of all these violent proceedings on the part of Scarborough; and had been importuned by him, to aid the settlers in repelling these hostile incursions, and in repressing the insolence of the surrounding savages: but the former preferring a resort to pacific measures, contented himself with apprising Berkeley, the governor of Virginia, of all these unwarrantable acts on the part of Scarborough, done avowedly under the authority of the latter. (28)

Final adjustment  
of Watkin's  
Point, and the  
line thence to  
the ocean.

These acts of unprovoked hostility on the part of Scarborough, were at once disclaimed by Berkeley as wholly unauthorised: and as the best mode of obviating all future difficulties, the governor of Maryland set on foot a negotiation with Berkeley for the purpose of effecting a final adjustment of the boundary line, between the respective possessions of the two governments on the eastern side of the bay. The entreaties and remonstrances of the former were at last crowned with success, and commissioners were appointed, viz: Philip Calvert, on the part of Maryland, and on the part of Virginia its surveyor-general, Edmond Scarborough, who were empowered to *determine the location of Watkin's Point, and to mark the boundary line between the two colonies running thence to the ocean.* By them this duty was fully discharged on the 25th June, 1668, and in consummation of it, certain articles of agree-

(27) Same pages, 170, 171 and 172.

(28) Council Chamber Records, Lib. H. II. 170 and 207.





ment were drawn up and signed by each of them, on behalf of their respective governments, in one of which they designate "*The point of land made by the North side of Pocomoke Bay, and the South side of Annamesssex Bay, as Watkin's Point,*" and the divisional line between the two colonies, to be "*An East line, run with the extremest part of the Westernmost angle of said Watkin's Point over Pocomoke river, and thence over Swansecute's creek into the marsh of the sea side, with opparent marks and boundaries.*" (29)

Thus ceased all the existing sources of controversy with the government of Virginia, about the validity or true location of the charter of Maryland: but not with them all the contests for the territory of the province. The proprietary seemed to be doomed to wage an eternal war for his grant: *and controversy after controversy crowded upon him as the ghosts upon the sleeping Richard.* He had now adjusted with Virginia the only points of difference which were likely to arise for many years, as to the location of his southern boundary, and even before these were adjusted, it became necessary for him to direct his attention to the preservation of his territory, on the northern and eastern borders of the province. In the unauthorised settlements in that direction which now required his attention, (although long anterior to the grant of Pennsylvania to Penn,) will be found the germ of all his dissensions with Penn, and one of the most efficient causes in producing the success of the latter. Unimportant as they were in their origin, they planted the seeds of a controversy, which was to agitate the province for nearly a century, and which finally terminated in depriving Maryland, in defiance of every thing like justice, of some of the fairest and most fertile portions of her original territory. As the source of such results, the consideration of them forms an important part of her history, and is necessary here to elucidate the disputes with Penn about the northern and eastern boundaries.

Swedish and  
Dutch settle-  
ments along the  
Delaware.

It has already been remarked that the northern boundary of Maryland, was at the time of its grant, the southern boundary of New England: but from the remoteness of the New England settlements, no disputes as

(29) See the report of these commissioners, and the several agreements connected with this negotiation, in Council Chamber Records, Liber C. B. Council Proceedings, 63 and 64.



to territory ever arose between them. The settlements to which we have above alluded, were the settlements made by the Swedes and Dutch along the Delaware or South river. It does not clearly appear at what time these settlements were commenced, nor is it a matter of much moment at this day. Chalmers, who had paid some attention to this subject, expresses the opinion, that they had made no permanent settlements any where along the Delaware river, before the year 1632, but that they might have traded to it before that period. Proud, on the other hand, asserts, that a fort was erected on the Delaware by emigrants from the Dutch or Manhattan's settlement, as early as the year 1623, which was, however, shortly afterwards abandoned. (30) Be this as it may, it is quite certain that if prior discovery gave title, (as was generally acknowledged by the European sovereigns,) or even prior settlements, the claims of the Dutch not only to the territory along the Delaware, but even to their Manhattan settlements, were wholly unfounded. The first voyage of discovery under which they could lay claim to any part of the continent, was made by Hudson in the year 1608 or 1609, and his voyage was not made for the purposes of settlement, but was merely one of exploration. Long ere this, the continent of North America had been explored by English navigators, and at that time, it will be remembered, that king James's grant to the Virginia Company, of the very countries explored by Hudson, had been made, and the settlements of the Southern or London Company had already commenced. After Hudson's voyage, the Dutch continued to trade to Manhattan, and at length, in 1620 and 1621, the Dutch West India Company, which had just been created, established trading houses in the Island of Manhattan's, which laid the foundation of the present city of New York. (31) A colony soon followed, and a regular government was established. Under the direction and protection of the government of New Netherlands, as the Manhattan settlement was styled, the colonies to which we have above alluded, were planted along the Delaware; and about the same time, or very shortly afterwards, the Swedes established a trading house

(30) 1st Proud, 110.

(31) Chalmers, 568.





on the eastern bank of Delaware. (32) This establishment gave umbrage to the governor of Netherlands, who asserted the exclusive right of the Dutch, to the country along the Delaware or South river, and at length, in 1638, he formally demanded the submission of the Swedes to his authority, but without success. From this period each continued to assert their respective claims, but without any actual hostilities of a serious nature, until 1651, when a trading house and fortification attached to it, which had been erected by the Dutch near the site of the present town of New Castle, were seized by the Swedes under the command of Resingh, who bestowed upon them the name of Fort Casimer, and shortly afterwards erected another fort called Fort Christiana, about five miles above. Provoked by these hostilities, the Dutch West India Company dispatched an armament for the reduction of the Swedish settlements on the Delaware, which was at length finally accomplished in 1655, when the Swedish colonists became the subjects of the States' General, and submitted to the government of New Netherlands. (33)

During all this period, but little attention was paid by the proprietary or his officers, to the progress of these settlements, which were yet too inconsiderable and too remote to excite any apprehensions, and of the advance of which, it is probable that for a long time they were scarcely aware. (34) At length in January, 1659, Colonel Nathaniel Utye was ordered by the governor and council of Maryland, "to repair to the pretended governor of a people seated in Dela-

Prometary's ef-  
forts to remove  
them from his  
territory.

(32) These Dutch and Swedish settlements are said to have commenced about the year 1628 or 1629. See the interesting note to 1st Proud 111.

(33) Chalmers, 630 to 634. 1st Proud, 118 and 19. 2d Anderson's Historical Deduction, 574.

(34) It appears that a small band of emigrants from Maryland, had made settlements along the margin of the Schuylkill as early as 1642, of which they were dispossessed by the orders of the governor of New Netherlands, (Chalmers, 632.) The existing records of the province of Maryland, furnish no evidence that this act of aggression was ever brought under the consideration of its government. This may be owing to the loss of the records during Ingle's rebellion: but apart from this, if the settlement was even planted under the authority of the proprietary, the distractions of the province, and the frequent revolutions in its government consequent upon that rebellion, the revolutions in the mother country, and the proceedings of Cromwell's commissioners within the province, are amply sufficient to account for the proprietary's acquiescence.





ware Bay, and to inform them that they were seated within his lordship's province without notice." The insidious instruction was also given him, "that if he find opportunity he shall insinuate to them, that if they will make application to his lordship's government, they shall find good terms according to his conditions of plantation." He bore a letter from the governor of Maryland addressed to the governor of New Amsterdam, (as the settlement was called) which commanded him and his subjects to depart the limits of the province. (35) Submission to this order was refused, and near the close of that year, Peter Stuyvesant the then governor of New Netherlands, despatched Augustine Herman and Resolved Waldron on an embassy to the governor of Maryland, bearing with them a manifesto in which a full exposition is given of the pretensions of the States' General to the territory in question. In this manifesto they allege a grant from Spain to the States' General of all their conquests and settlements in America, (of which they say that Curacoa, Brazils and the New Netherlands made a part,) and a grant from the States' General to the Dutch West India Company, of all the territory from latitude 38 to 42, as the basis of their title which they hold to have been confirmed, even if doubtful by the treaty of 1652, and their purchases from the Indians. They also assert their previous possession and settlement of the country adjacent to the Delaware, and utterly deny the title of the proprietary: but at the same time profess their willingness to appoint commissioners to adjust certain of their boundaries, leaving their water limits on the Chesapeake Bay undefined. (36) In reply to this manifesto, the governor and council informed these ambassadors, that the title set up by them might be easily disproved, and that even admitting it, they did not believe that their settlements were sanctioned by the States' General; and the submission of the settlements in question was formally demanded of them. This demand was promptly rejected, and thus terminated the negotiation. (37) In May, 1661, the subject was again brought before the council of Maryland, when it was resolved, that as it was a matter of doubt whether New Am-

(35) Council Chamber Records, Liber H. H. Council Proceedings from 1656 to 1668.

(36) This singular manifesto is recorded at large amongst the Council Proceedings of Maryland, Liber H. H. 38 to 54.

(37) Liber H. H. 57, 58 and 59.



Amsterdam, lay below the 40th degree of N. latitude, and as the West India Company appeared to have resolved to maintain their possessions by force, and there was no prospect of any aid from the other colonies, in any attempts which they might make to reduce them, all further efforts for their subjugation should be delayed until the will of the proprietary could be ascertained, and that in the meantime some efforts should be made to determine whether the settlement was located within the limits of the grant. (38) An agent was now dispatched to Holland, to enforce upon the West India company the claims of the proprietary to the territory in question, and to repeat the demand that it should be abandoned. Compliance with this demand was again refused, but orders were given by that company to its settlers, to withdraw from the territory about Cape Henlopen which they had purchased of the Indians. This was accordingly done, but New Amsterdam or New Castle, and the adjacent country, were still retained in possession. (39)

In the meantime the government of New Netherlands was continually laboring to extend its settlements to the north of Manhattan's and across to Connecticut river, until Charles II. provoked by its continued encroachments, and perhaps animated by that ill will which he is said to have always cherished towards the Dutch, determined to effect the conquest of the whole settlement. To accomplish this, in March, 1664, he granted to his brother James, Duke of York, all that tract of country extending from the west banks of the Connecticut to the Eastern shore of Delaware, (including Long Island,) and conferred upon him the power to govern the same. To render this grant available, an armament was immediately dispatched by James, under the conduct of Colonel Nicholls, for the reduction of New Netherlands. This was accomplished in September, 1664, and in the ensuing month, the settlements upon the Delaware, which were dependencies of the government of New Netherlands, were surrendered to a detachment from Nicholls's forces, under the command of Sir Robert Car. By the terms of the capitulation, the Dutch colonists were admitted to all the privileges of English

Reduction of  
them by the  
Duke of York.

(38) Council Proceedings, Liber H H. 113.

(39) Chalmers, 631.





subjects under the new government, and from this period until the grant to Penn from the Duke of York, these settlements were the dependencies of the government of New York, although clearly within the limits of Maryland. (40) They, however, embraced only a small portion of territory lying along the Delaware river.

Grant of Penn-  
sylvania.

The grant of the Province of New York to the Duke of York had just been made, and a portion of the granted territory was yet in possession of the Dutch, when in June, 1664, he carved out of it the province of New Jersey, which was by him granted to the lords Berkeley and Carteret. The grant of the province of New Jersey, is here mentioned, because it first introduces to our notice the celebrated William Penn, the proprietary of Pennsylvania, who very shortly after the erection of the former province, became one of its proprietors. His connexion with it appears to have inspired him with the design of obtaining from the crown, a grant, as sole proprietor of the territory westward of the Delaware river. His interest in the New Jersey grant led to the discovery of the fertility of the lands lying westward of the Delaware, and his entangling connexion with many other persons in the ownership and conduct of the province of New Jersey, made him most earnestly desire a separate and sole grant. Hence in 1680, he petitioned king Charles II. for a grant of lands westward of the Delaware, and north of Maryland. His petition was submitted to the Duke of York's secretary, and to Lord Baltimore's agents, that it might be known how it would affect the respective rights of these proprietaries. In the reply of the latter, they desired for the protection of Baltimore's grant, that the grant to Penn, if made, should be north of the Susquehanna Fort, and of all the lands lying south of a direct line, running east and west from said Fort; that it should contain general words of restriction, as to any interest granted to Lord Baltimore, and a saving of all his rights, and that his council might be permitted to see the grant before it was passed. This was assented to, and the grant was finally made, on the 4th of March, 1681. (41) Its

(40) See the articles of capitulation in 1st Proud, 123.

(41) Chalmers, 656. In the reply of Weiden, the Duke of York's secretary, to the requests of Baltimore's agents, he remarks, "that by all which he





boundaries which are said to have been settled by Lord Chief Justice North, were, "the Delaware on the east, whence it extended westward five degrees of longitude, the 43d degree of latitude on the north, and on the south, a circle of twelve miles drawn around New Castle, to the beginning of the 40th degree of latitude." This definition of its southern boundary, which, in its literal construction could not be gratified, and which, therefore, left open the question, whether this boundary circle was to be a circle of twelve miles in circumference, or to be drawn around a diameter of twelve miles passing through New Castle, or with a radius of twelve miles beginning in New Castle, was the origin of one of the present boundary lines of this State, and was one of the principal sources of the contention between Baltimore and Penn. (42)

Such being the grant, in May, 1681, Markham, Penn's grant from the Duke of York, and his negotiations with Baltimore. the kinsman of Penn, was dispatched by the latter to take possession of the granted province, bearing with him the king's letter of April, 1681, apprising Baltimore of the grant, and requiring the two proprietaries to adjust the boundaries between their respective provinces, according to the calls of their charters. Upon the reception of this letter by Lord Baltimore, (who was then in the province,) an interview took place between him and Markham, shortly after the arrival of the latter, at Upland, (now called Chester,) which, to the astonishment of all parties, resulted in the discovery from actual observation, that Upland itself was at least twelve miles south of the 40th degree, and that the boundaries of Maryland would extend to the Schuylkill. (43) This discovery at once ended the conference, and gave fresh incentives to Penn in his efforts to obtain from the Duke of

can observe of the boundaries mentioned in Mr. Penn's petition, they agree well enough with that colony which hath been ever since the conquest of New York by colonel Nicholls, held as an appendix, and part of the government of New York by the name of the Delaware Colony, or more particularly New Castle Colony, (that being the name of the principal place in it, and the whole being promiscuously planted by Swedes, Dutch, Finlanders and English,) all of which have hitherto been under the actual government of His Royal Highness's Lieutenant at New York."

(42) 1st Proud, 170.

(43) Chalmers, 657.



York, a grant of the Delaware settlements, inasmuch as without such grant, he had now reason to fear the loss of the whole peninsula. His earnest desires were at length gratified by the Duke, who conveyed to him in August, 1682, the town of New Castle, with all the territory for twelve miles around it, and also the territory extending southward from it, even to Cape Henlopen, and at the same time released to him all claims which he might have to the territory, included in the grant of Pennsylvania. (44) It is unnecessary here to remark upon this conduct of the one, in granting that to which he had no title, and of the other, in seeking for and accepting such a grant, with a full knowledge of its invalidity, for the single purpose of enabling himself to encroach upon Baltimore's territory under colour of right. The judgment of history has already been passed upon it, and we, of this day, who listen to nothing but the plaudits of Penn, may learn from a contrast of these, not only with his conduct on this occasion, but throughout his proprietary transactions with Baltimore,—*“how effectually success will often gild usurpation and sanctify wrong.”* Penn was now doubly armed; and fortified by this grant and release, his original grant and a letter from Charles II. directing the proprietary of Maryland to assent to a speedy adjustment of his northern boundaries, and in that adjustment to determine them by measuring from his southern boundary two degrees to the north, reckoning sixty miles to the degree, he speedily repaired in person to his province, and sought an interview with Lord Baltimore. He was now as eager to adjust his boundaries under these new circumstances, and in conformity to the king's letter, as he was formerly anxious to evade their adjustment after the discovery at Upland. His wishes for an interview were gratified; and it accordingly took place between him and Lord Baltimore, within the province of Maryland, in December, 1682: when the letter of king Charles was submitted to the latter, and his compliance with it requested. Baltimore received it with respect, but remarked with reference to the mode of adjusting his boundaries prescribed by it, “That his majesty's directions were surely the result of misinformation, as his (Baltimore's) patent granted no specific number of degrees, but merely called for the 40th degree of





north latitude as its northern limit, and that such being the right granted by his patent, no royal mandate could deprive him of that right." Obedience to it being thus respectfully declined, Penn professed his willingness to waive this mode of adjustment, and to admit the 40th degree as the boundary, provided it were ascertained not by actual observation, but by mensuration from the Capes of Virginia, the latitude of which had already been ascertained. This proposition was also declined, and thus ended a fruitless conference of three days: In May, 1683, another meeting took place at New Castle, which was followed by the same result, and which put an end to all hopes of an amicable termination of their controversy. Accounts of those negotiations were transmitted by each party to the commissioners of trade and plantations: and in these, as is usual in such cases, each party attributed to the other the whole failure of the negotiations. In the representations of these, made by Penn, he discloses to us the causes of his extreme anxiety to avoid an adjustment according to the strict letter of Baltimore's patent. "I told him (says Penn in detailing his negotiations) that it was not the love or need of land, but the water; that he abounded in what I wanted, and had access to it, and has carriage even to excess, and because there is no proportion in the concern, for if I were a hundred times more urgent and tenacious, the case would excuse it, because the thing insisted on, was ninety-nine times more valuable to me than to him,—to him the head, to me the tail. I added, that if it were his planting, it would recompense the favour not only by laying his country between two thriving provinces; but the ships that yearly come to Maryland, would have the bringing of our people and merchandise, because they can afford it cheaper, whereby Maryland would for an age or two become the mart of trade." (45) We, of this day, cannot but be amused with these delusive prospects of gain, held forth by Penn to Baltimore, as an inducement for the surrender of his territory, and at their singular inconsistency with his avowed purpose in desiring the surrender. He tempts Lord Baltimore with the hope that his colonists will be the carriers of the trade of Pennsylvania for an age or two, and at the same time desires the surrender of the lands

(45) See Penn's account of these negotiations, in Chalmers, 661–66. 1st. Proud 267 to 274.





along the Delaware, that he may secure to himself the navigation of that river, and a direct water-outlet for the trade of his province. When we witness his extreme anxiety to secure this in all his intercourse with Lord Baltimore, we almost imagine that his prophetic spirit had looked into futurity, and saw the day not far distant, when "*the genius of the empire would westward wing her way;*" and by the aid of the advantages which he sought, the howling wilderness would be metamorphosed into the cultivated, populous and smiling land, luxuriating in peace and plenty, and there would start up as if by magic, one of the chief commercial emporiums of the first republic of the world.

Objections urged  
against the char-  
ter of Maryland.

In these representations we find him preparing to assail Lord Baltimore with new objections. He had relied in the first instance upon his grant of Pennsylvania; but the observation at Upland had satisfied him that this would not avail him. He threw himself next upon the grant from the Duke of York and the king's letter; but in the face of all these, he found Baltimore resting firmly, and with confidence upon the imperative terms of his charter. To shake this confidence it now became necessary to assail that charter: and hence in these representations we find Penn objecting to it because the Delaware settlements had been purchased and planted by the Dutch before that charter was granted; and that even if Baltimore had acquired a right to them under the patent, he had forfeited it by suffering others than his colonists to retain possession of them for forty years. This objection, which will be found to have governed the decision of the commissioners of trade and plantations in 1685, and to have ultimately deprived Baltimore of that portion of the peninsula which now forms the State of Delaware, did not originate with Penn. It will be found amongst the objections urged against the charter, and in support of the claims of Virginia, whilst the government of Maryland was in the hands of the protector's commissioners; and it was strenuously urged by the Dutch ambassadors in 1659, in the vindication of their title to the territory along the Delaware; in which they object to the efficacy of the patent, because it granted only such lands as were *uncultivated and uninhabited*. (46) In the close of his re-

(46.) Hazard's Collections, Vol. 1st. 594 to 680. Council Proceedings of Maryland, Liber II. II. 48 to 54.



presentations to the board, Penn requested, "that the boundaries of Maryland might be determined by the judgment of ancient times: and that Baltimore might be required to measure his two degrees at sixty miles the degree, and that the fortieth degree might be ascertained by measurement at that rate from Watkin's Point:" *which he urges by the emphatic remark*, "that a province lay at stake in the success of his request." From this period he denied the validity of the grant as to the eastern side of the peninsula: and in 1684 he repaired in person to England to urge an application for a new grant, including the disputed territory.

Baltimore's efforts to make settlements on the disputed territory.

Throughout this controversy, and indeed from the moment of the withdrawal of the Dutch beyond Cape Henlopen, and the subjection of the settlements along the Delaware river to the government of New York, the proprietary and his officers incessantly labored to extend the Maryland settlements to Cape Henlopen, and thence north to and along the Delaware. The council proceedings of this period abound with injunctions to this effect, emanating both from the proprietary and from his governors, and with propositions to settlers of a most inviting character. (47) Had these been attended with the desired results, and had the proprietary succeeded in planting numerous and thriving settlements along the Delaware before these objections to the patent were started by Penn, it is probable that his possessions would not have been disturbed. He did not, however, succeed in effecting this, before the grant to Penn from the Duke of York, of the Delaware settlements: and from that period Penn's strenuous opposition to the extension of his settlements, deterred many from accepting of the proffered terms.

After the failure of these efforts at an amicable adjustment in the interviews above alluded to, and before the departure of Penn to England, to urge his application for the grant along the Delaware, Baltimore, in September, 1683, through Colonel George Talbot, formally demanded the surrender of all the lands lying on the west side of Delaware river, and south of the 40th degree of latitude, according to a line run due east and west from two observations, the one made on

Adjudication of the board of trades and plantations.

(47) See Council Proceedings, Liber C B. pages 7, 23, 24, 25, 48, 100. Lib. R. R 122 and 2d part do. 62 and 76.





the 16th of June, 1632, and the other on the 22d of September afterwards. This demand was resisted by Penn in a reply of great length, in which, after setting forth many objections to the manner and circumstances of the demand, he urges as a bar to it, the previous possession of the Dutch, Lord Baltimore's neglect to conquer them, and his (Penn's) grant from the Duke of York. (48) It was, perhaps, owing to this demand, that Penn was induced to repair to England in person to press his application for a new grant. It taught him that Baltimore was not disposed to sleep upon his rights, nor to permit him to engross his territory by gradual and silent encroachments: and he now perceived the necessity of an instant and vigorous opposition to Baltimore's claims under his charter. No course was left open but to attack the charter, and the best mode of effecting this, was by seeking a new grant for the territory alleged to be unaffected by it, whilst Baltimore was resting with confidence upon it, and not even expressing a desire for its confirmation. Penn's application was judicious in its nature, and well timed as to the circumstances under which it was preferred. The proprietary was, at that very period, under the displeasure of the crown, in consequence of certain differences between him and the collectors of the royal customs: and had but little to hope from its favor. The application had been preferred by Penn before his return to England: and notwithstanding the strenuous and unremitting opposition of the proprietary, its consideration had been referred by the king, to the commissioners of trade and plantations, in May, 1683, and Penn's visit was intended to produce a favorable and speedy adjudication. He was successful; for in November, 1685, that board decided that Lord Baltimore's grant included only "lands uncultivated and inhabited by savages, and that the territory along the Delaware, had been settled by christians antecedently to his grant, and was therefore not included within it," and they directed that to avoid all future contests, the peninsula between the two bays should be divided into two equal parts by a line drawn from the latitude of Cape Henlopen, to the 40th degree of north latitude, and that the western portion belonged to Baltimore, and the eastern to his

(48) 1st Proud, 276 to 283.





majesty and by consequence to Penn, to the confirmation of whose grant from king James this decision enured. (49)

At the period of this adjudication the exigencies of Baltimore's situation were such as to require, if not his prompt compliance with, at least his silent submission to its mandates.

State of the controversy from the order of 1685 until 1718.

He was now menaced with the total loss of his grant, against which a *quo warranto* had already been issued; and resistance to the will of that monarch would only have served to hasten and ensure that loss. It was a dark period in the judicial history of England, when no chartered right was safe, if the king willed it otherwise: and those who would escape the storm, found it necessary to bend before the blast. But an æra in the affairs of the mother country was now at hand, which with the revolutions it brought in its train, was destined for a time to overwhelm all these minor controversies. It came in time to save the charter of Maryland, and to suspend the execution of the adjudication of 1685: and it was followed by a series of revolutions in the condition of the two proprietaries, and the state of their respective provinces, under which the question of boundary from that period until the agreement of the 10th May, 1732, hereafter mentioned, was left to rest upon the unexecuted adjudication of 1685, and the state of facts in which that decision found the controversy. The causes of its suspension for nearly half a century, will be found in the condition of the mother country, and the provinces throughout that interval. The earnestness with which Penn had sought this adjudication, assures us that the actual location of their boundaries in conformity to it, would have been pressed upon Baltimore with the same eagerness and success with which the decision itself had been sought. James, his friend, his patron, and the author of his grant, was on the throne, and the charter of Maryland was already at the mercy of the crown. But for that monarch the day of retribution had at last arrived. The measure of his iniquities was full. He who had so long trampled upon the rights of others, was now to know and respect the rights and feel the indignation of an insulted people. He was expelled the throne, and the government of England was committed to William of Orange, by whom but little



respect was paid to the unjust, arbitrary and partial decisions of his predecessor. The anti-catholic feeling which was generated by the occurrences that preceded and attended the revolution, which seated William on the throne, soon extended itself to the province of Maryland, and became the rallying point for all the mal-contented of the province who wished to shake off the rule of the proprietary. The spirit of ambition and misrule always mask themselves behind some plausible pretext of public good, or some seeming earnestness for the general welfare: and in that age the cry of "No Popery," was the watchword in the mouths of many whose services to the holy Protestant church had never extended beyond lip-service, and whose whole lives had been an illustration of practical infidelity. In these considerations we find enough to account for the existence of the Protestant association, which was formed within the province at this period by John Coode and others, for the avowed purpose of shaking off the proprietary government. The proprietary was indeed a catholic: but whatever his religious feelings or his political inclinations, the records of that day furnish us with no evidence of his attempts to propagate them by the persecution of his subjects: and when we contrast his gentle sway with that of those who were the leaders in this association, we are ready to exclaim "*Oh religion, how many sins are committed in thy name.*" The association was successful, and in the year 1689, the government of the province passed from the proprietary into the hands of the leaders of this association; and being shortly afterwards in 1690-91 taken from these self-constituted rulers, it became and remained a royal government until 1716. During all this period, it was, as other royal colonial governments, administered under the crown, and the proprietary, stripped of his powers of government, was the mere proprietor of the soil and of the rights incident to its ownership. It would therefore have been useless and unwise on the part of Penn, whatever his situation, to have pressed upon the English crown, an adjudication founded upon his personal favour with the expelled monarch, and contracting the boundaries of a province which had fallen directly under the royal rule. To these considerations were added others flowing from the peculiar relation in which Penn stood with reference to the old and new governments. With James he had been a favourite: and his favour with that





monarch, and his tardy movements in support of the revolution, induced those who were prominent in it, to rank him amongst the disaffected. Hence he was twice or thrice summoned before the privy council, and held to bail upon the charge of defection from the newly established government: and at length in 1692, he was deprived of the government of Pennsylvania and its territories, which was then assumed by the crown. (50) In August, 1694, he was restored to his government, but not to such favour with the king as allayed all his fears as to his old possessions: and these fears were revived in their full force by an effort made in the English Parliament, in the year 1701, to convert his and the other proprietary governments into royal governments. (51) His return to England and the death of king William, relieved him from this new danger; and the elevation of Anne to the English throne, again brought him into favour at court. This interval of royal protection he did not fail to improve: for we are informed that he twice petitioned Anne for a further hearing upon the subject of these boundaries; and that his wish being accorded, the order of 1685 was reconsidered, ratified and ordered to be instantly carried into execution. (52) And now that Penn had again attained to the summit of his wishes, his situation had again become such, as to debar him from the full benefits of the decision. The establishment of his colony had involved him in pecuniary difficulties, from which he could extricate himself only by a mortgage of his province. The discontents of his colonists added much to the difficulties of the moment: and disease had stripped him of much of that energy which was necessary for the exigencies of his condition. Weary of these embarrassments, and sinking under the difficulties of his situation, he at length in 1712, contracted with queen Anne for the sale of his provinces. An attack of the apoplexy at the moment of the consummation of this contract, disabled him from making a valid surrender of his province: and in the state of mental imbecility which this begat, he lingered until his death in 1718. The circumstances which prevented this surrender after his death, it is unnecessary to detail, and it will suffice to say that the govern-

(50) 1st Proud, 347 and 377.

(51) 1st Proud, 403.

(52) 1st Proud, 294.





ment of his province, was committed after his decease, and in conformity to his devise, to his three sons by his last marriage, John, Thomas and Richard Penn.

During the long interval between the order of 1685, and the accession of these proprietaries, which was but a few years after the restoration of the proprietary government in Maryland, there were doubtless many border contests for the *debateable* territory; but, with reference to the actual state of the controversy between these proprietaries, and the effects which they produced upon them, they are about as important and worthy of consideration as were *the wars of the Pigmies and the Storks*. Both provinces being now in the undisturbed possession of their respective proprietaries, this interesting, and to both, important controversy, was revived in the very year after the accession of the younger Penns, by grants emanating from the government of the latter, and more especially of a tract of land or manor called Nottingham, as lying within the county of Chester, and within which the justices of Cecil undertook to exercise their jurisdiction, and to levy taxes. To adjust this difference, an interview took place between Hart, governor of Maryland, and Keith, governor of Pennsylvania, which resulted in a mutual agreement to preserve the good understanding between the provinces until the difference could be adjusted. In March, 1722, this subject was again brought under the consideration of both governments, and again resulted in the same temporary agreement, and in a proposition for a future interview which does not appear to have been held. This controversy is principally worthy of notice, because of the new ground assumed by the disputants on the part of Pennsylvania. In a paper submitted by the governor of Maryland to his council, which was entitled, "A plain view of all that has been talked of or done for twenty years past, as to the boundaries between Pennsylvania and Maryland." It is alleged that Baltimore himself had determined the extent and boundary of his own grant, by an actual observation made in 1683, and by then running a line from a point at or near the mouth of Octorara creek in Cecil, due east to the Delaware: and that this line by which Baltimore himself had excluded all his pretensions to the territory north of the Octorara, and by consequence to the Nottingham grant, had ever



since been regarded as the boundary line of the two provinces. It is also alleged that in 1700, Penn having occasion to pass up the Chesapeake Bay, on a visit to the Susquehanna Indians, was accompanied by several citizens of Maryland as far as the mouth of Octorara Creek, where they excused themselves from further attendance upon him, by the observation, that they had now accompanied him into his own territory. Whence this "*plain view*" came, and by what authority prepared or sanctioned, the Council Proceedings do not inform us: yet, although it does not purport to be an official paper, emanating from the government of Pennsylvania, [it seems, from the manner in which it was preferred to, and received by the council of Maryland, to have been regarded as having the sanction of the former government. Although this paper was respectfully received, its allegations, as to the establishment and universal reception of the boundary line from Octorara, were not admitted to be true, and the depositions of several persons were ordered to be taken, for the purpose of controverting several of its material statements. It is, indeed, quite probable, from the language of some of Baltimore's instructions, that some attempt was made in 1683, to ascertain these boundaries by actual observation, and perhaps, even the termini and course of the line were determined. Yet, besides the other objections set out by the council, it is obvious that, this survey being an *exparte* proceeding on the part of Baltimore, and not the result of a compact between him and Penn, nor obligatory upon the latter, could not conclude the former under any circumstances, and most clearly, not in a case of palpable mistake. (53) From the period of this controversy until May, 1732, the good understanding between the two provinces was preserved by mere temporary expedients, which were every now and then set at nought by some act of border aggression and outrage; until the subject of difference was closed as far as a

(53) The history of this controversy, of the causes which led to it, and of the various proceedings in connexion with it, may be collected from the Council Proceedings, Liber X. 59 to 63,—68 to 93,—193 to 196. It was attended with considerable excitement, because the claimants under Pennsylvania grants had not only extended their surveys into what were deemed the limits of Maryland, but had also actually arrested Van Bibber, Chief Justice of Cecil, whilst engaged in a survey along the branches of Apoqueminick Creek.





mere agreement was effectual for that purpose, by the well known compact of 10th May, 1732, entered into between Lord Baltimore of the one part, and John, Richard and Thomas Penn, proprietaries of Pennsylvania, of the other part.

This agreement, so far as it relates to the definition of the boundaries, was a full concession of the claims of the latter. In determining the boundaries of their respective *peninsular possessions*, it provided that they should consist of a Agreement of May 10th, 1732, line beginning at the easternmost part of Cape Henlopen, and running due west to the exact middle of the peninsula at that point, and of a line running from that middle point in a northerly direction so as to form a tangent to a circle drawn around New Castle, with a radius of twelve miles. And thus it gratified the grant of 1682, from the Duke of York to Penn, the original proprietor, which, as has been seen, conveyed all the territory for twelve miles around New Castle, and thence southward to Cape Henlopen. In adjusting the northern boundary of Maryland, which was also the southern boundary of Pennsylvania, it determined that that boundary should begin, not at the 40th degree of latitude, as called for by the charter of Maryland, but at a latitude fifteen English statute miles south of the most southerly part of Philadelphia; and that to connect this common boundary line with the boundary lines of their peninsular possessions, it should begin upon the said tangent line, if it extended to that latitude, or if not, that then a line should be drawn due north from the point at which the tangent met the circle until it reached that latitude, and that the said boundary line between Maryland and Pennsylvania should then begin: and that beginning in said latitude, either on said tangent line, or said north line, as the case might be, it should run due west to the western extremity of the two states. As incidental to this agreement, there were incorporated into it several stipulations with reference to the navigation of rivers, flowing through both provinces, and as to the interests of grantees or occupants of lands lying within the *debateable territory*, which, for the purposes of the present enquiry, it is not material to notice. To carry it into effect, each of the contracting parties was required to appoint, within two months thereafter, not less than seven commissioners, under whose direction the survey of the boun-





daries was to be completed on or before the 25th of December, 1733, and when completed, a plat of the survey, with an exact description of its courses and bounds, was to be signed both by the commissioners and the proprietaries, and entered on record in the public offices of the provinces. (54) In pursuance of this agreement, commissioners were appointed, between whom, at the very outset of the performance of their duties, differences arose as to the proper application of the terms of the agreement, and the manner of carrying it into execution, which at once put an end to this new effort at adjustment.

The result of it was, however, such as to give Baltimore cause to tremble for the extent of his concessions in that agreement: and now, for the first time, he sought to relieve himself from all

Baltimore's application to the King in council, and result of it.

II. a confirmation of the charter, non obstante the words of description contained in it, which represented it

*"as uncultivated, and inhabited by savages."* These unfortunate words, which the sagacity of Penn had turned to good purpose, in his objections to the charter, as obtained by misrepresentation at least as to the peninsular territory, had been the source of his most serious difficulties, and they now suggested an expedient which it would have been well for the proprietary of Maryland to have adopted in the very origin of the controversy. To adopt this expedient, was indeed to admit the force of the objection, and hence the tardy resort to it; yet it is probable, that if instead of relying with entire confidence upon the efficacy of the charter, the proprietary had, upon the first appearance of this objection, petitioned for this confirmation, it would have been at once accorded by the justice of the crown, and thus in all future contests, his claims would have rested upon an unquestionable chartered right. Fortified by this right, whatever might have been the result during the reign of James, the principles of political liberty and the respect for chartered rights, which rose in triumph when he fell, must ultimately have restored Baltimore to the full enjoyment of his original grant. As it was, the proprietaries of Maryland had suffered difficulty to ac-

(54) For a view of this agreement see the recitals of the agreement of 1760, hereafter alluded to, and also 2d Proud, 209, and Kilty's Landholder's Assistant, 170 and 171.



cumulate upon difficulty, and objection to spring upon objection, until it was too late to retrace their steps. Had the confirmation been sought and obtained in the first instance, it would have been a preventive; but now it was applied for as a remedy, and only when all else had failed. The application thus made was strenuously opposed by the proprietaries of Pennsylvania, who interposed Baltimore's voluntary agreement and surrender of territory as a bar to his application. The result was, that for the purpose of testing the validity and conclusiveness of that agreement, by an order of the King in Council in 1735, the Penns were directed to institute proceedings in Chancery upon it, and the consideration of the petition was delayed to await the issue of those proceedings. The proceedings in Chancery were accordingly instituted in June, 1735, and the question of right involved in it, was thus suspended until the decree in 1750. (55)

During this interval, some excesses of a frightful nature were committed on the borders of Lancaster and Baltimore counties.

State of the boundaries from the agreement of 1732, until the decree thereon in 1750. The most prominent of these was, the attack upon the house of Thomas Cresap, a citizen of Maryland, which was made by a body of armed men from Pennsylvania, who are said to have set fire to the house

in which were Cresap and his family and several of his neighbours, and to have attempted to murder them as they made their escape from the flames. (56) On the other hand it was alleged in recrimination by the government of Pennsylvania, that a body of armed men from Maryland, to the number of three hundred, had invaded the county of Lancaster in a warlike manner, and had resorted to the most violent measures during their incursions, to coerce submission to the government of Maryland. These border excesses, and the recent defection of many citizens of Baltimore county, who formally renounced their allegiance to the government of Maryland, were of so alarming a character, that the governor and council of Maryland, found it necessary to make a full representation of the facts, both to the proprietary and the King in Council. Their petition occasioned an order in council of August, 1737, by which the proprietaries were commanded to put a stop to these excesses, and to use their utmost

(55) See the recital of the agreement of 1760.

(56) Council Proceedings, Liber M, A. D. 1735.





efforts to preserve peace between the two provinces: and as the best mode of accomplishing this, they were inhibited from making any grant of the disputed lands, and particularly in the three lower counties, and from suffering any person to make settlements therein, until his majesty's pleasure, with reference to the territory in question, should be signified to them. (57) The situation of the two proprietaries at that moment, and their desire to conciliate the crown, induced a ready compliance with this order in council, to carry which into effect, an agreement was entered into between them in May, 1738, which provided for the running of a provisional and temporary line between the provinces, which was not to interfere with the actual possessions of the settlers, but merely to suspend all grants of the disputed territory as defined by that line, until the final adjustment of the right. This agreement was approved of by the king, and ordered to be carried into execution, and, in pursuance of it, in 1739 the provisional line was actually run. (58)

Decree upon the  
agreement of  
1732.

Upon the proceeding in Chancery, a decree was pronounced by chancellor Hardwicke, in May, 1750. It is not necessary to review the various objections, both to the jurisdiction of the court, and the efficacy of the agreement, which were urged on behalf of Lord Baltimore. They are all summarily stated by the chancellor in his decision, as reported in 1st Vesey Sen's Reports, 444 to 456. It seems, however, to illustrate the circumstances, under which the agreement of 1732 was entered into, and the agency of Baltimore in bringing it about. In the remarks of the chancellor upon the allegation of imposition and fraud practiced upon Baltimore in the formation of that agreement, he says, "It would be unnecessary to enter into the particulars of that evidence: but it appears that the agreement was originally proposed by the defendant himself; that he himself produced the map or plan afterwards annexed to the articles,—that he himself reduced the heads of it into writing, and was very well assisted in making it: and further, that there was a great length of

(57) Council Proceedings, Liber M, which contains all the representations, proclamations and council transactions generally, in connexion with these border tumults. And also the above mentioned order in Council of 18th August, 1737.

(58) See Smith's Laws of Pennsylvania, 2d vol. 134.





time taken for consideration and reducing it to form." Under such a state of facts, the objection to its execution certainly came very ungraciously from Baltimore; and whatever his folly in forming it, it was but justice not to permit him to stultify himself. The objections to the jurisdiction being overruled, the decree, therefore, very equitably ordered the specific execution of the agreement: and to obviate the difficulties which had arisen in the voluntary effort in 1733, to carry it into execution, the chancellor pronounced an opinion as to the true location of Cape Henlopen, and the manner in which the circle around New Castle was to be described. As to the former he remarks, "that it is clear by the proof, that the true situation of Cape Henlopen is, as it is marked in the plan, and not where Cape Cornelius is, as is insisted upon by the defendant, which would leave out a great part of what was intended to be included in Penn's grant from the Duke of York: and there is, says he, strong evidence of seisin and possession by Penn, of that spot of Cape Henlopen, and of all acts of ownership." The circle around New Castle he held to be a circle described around it with a radius of twelve miles, radiating from the centre of the Town.

(59)

In conformity to this decree, commissioners were appointed by each of the parties to carry it into effect, and further difficulties soon arising as to the circle, the subject of difference was referred to the chancellor under a general power reserved by him in the decree, to adjust any difficulties which might arise in its execution. It was contended by the Maryland commissioners, that the radius should consist of twelve miles of superficial measure: but it was decided by the chancellor, upon the reference, that these miles, as well as the fifteen miles intervening between the boundary and the city of Philadelphia, should be reckoned by horizontal measure. The commissioners had, in the meantime, proceeded to execute the other parts of the survey about which there was no invincible

Proceedings of  
the commission-  
ers under this de-  
cree.

(59) I have before me a copy of the minutes of this decree, and also of the commission issued under it by the proprietaries of Pennsylvania, for which I am indebted to the kindness of Charles Smith, Esq. of Pennsylvania, whose learning and spirit of research are so conspicuous in his admirable edition of the laws of that State.



disagreement, and before April, 1751, they had ascertained the true location of Cape Henlopen, and had made an actual survey of the due west line, running thence across the peninsula. The true position of Cape Henlopen they determined to be a point situated one hundred and thirty-nine perches from a stone, fixed by them on the north point of Fenwick's land. About the proper termination of the peninsular line running thence, they disagreed; Baltimore's commissioners contending that the entire line across the peninsula, from the middle of which the tangent line was to start, should terminate at Slaughter's Creek: and those upon the part of Penn, insisting upon the extension of the line to the eastern verge of the Bay. The former line was ascertained to be sixty-six miles and twenty-four and a half perches, and the latter sixty-nine miles and two hundred and ninety-eight perches.

In this state of execution, the progress of the work was suspended by the death of Charles Lord Baltimore, in April, 1751,

Death of Charles Lord Baltimore, and the efforts of the new proprietary to resist the decree of 1750.

with whom the agreement of 1732 had been entered into, and fresh sources of controversy were at once opened. Two conveyances of the province in strict settlement had been made by the proprietaries of Maryland, under which Frederick Lord Baltimore, the heir of Charles, now contended that he was protected from the operation of the agreement of 1732 and the decree of 1750, and therefore resisted the execution of the decree. (60) Thus resisting, he endeavoured to ascertain to what extent a compliance with the agreement and decree would affect his territory: and with this view in 1753, he ordered governor Sharpe to furnish him with the best possible information as to the present state of the boundaries between his province and Pennsylvania, and particularly as to the lower counties, the location of Cape Henlopen, and the effect of the twelve miles circle if the radius were determined by horizontal measurement. The council of the province, to whom these enquiries were referred by the governor, declined a reply until a survey could be made of the northern or tangent line: but in September, 1753, the subject being again under consideration, they inform the proprietary "that





there is so much uncertainty as to the heads of the rivers running into the Chesapeake Bay, as well as to the circle of New Castle, that they would not advise any particular boundary, unless a due north line could be run from the peninsular line, as also a due west radius from the centre of the circle. (61)

Hence it was that Frederick, being unable after inquiry to determine the exact effect of the decree upon his territory, and particularly upon his possessions along the Bay, was  
The final agreement of 4th July, 1760. resolved to resist it: and to enforce his submission, a bill of revivor was filed against him by the Penns in 1754: but before a decree was had upon this new state of the controversy, it was finally determined by the agreement of the 4th of July, 1760, between himself and Thomas and Richard Penn, the surviving proprietaries of Pennsylvania. This agreement of 1760 adopted the agreement of 1732, and the decree of 1750, in their full extent, as to the definition of the boundaries: and also all the proceedings of the former commissioners under them so far as they had been definitive. Cape Henlopen was determined to be the point located as such, by these commissioners, and the peninsular line, which had been contended for by the Pennsylvania commissioners, was also adopted; and therefore the point at which the tangent line was to start from said peninsular line, was fixed at the distance of thirty-four miles and three hundred and nine perches from the point of beginning at Cape Henlopen. At the point of intersection of the tangent and peninsular line, boundary stones were to be planted at their joint expense, marked on the south and west by the Baltimore family arms, and on the north and east by those of the Penns. It was also agreed that the old bill in Chancery should be dismissed without costs, and that either party within thirty days after the filing of a bill by the other, predicated upon this agreement, would file his answer admitting this agreement, and his liability to the original agreement and decree, and assenting to the cause being put down at once for hearing and answer: and that, if necessary, Baltimore would join in a petition to the king to establish the agreement.

It contains also a saving of the rights of grantees, and those claiming under them in or to all lands held under grants from the





Savings under it. proprietaries of Maryland, (which were by this agreement ceded to Pennsylvania,) where the grantee was in the actual possession and occupation of them: and a similar saving as to lands ceded to Maryland, which were held by grantees from the proprietaries of Pennsylvania, or those claiming under them, and in their actual possession: and in all such cases, such lands were to be holden of the new proprietary as they were held under the original grant. Besides this general saving, it contains also a special saving of rights under grants from the proprietaries of Maryland, to any lands lying north of the line running west from the Susquehanna, and within a quarter of a mile of it: and a similar saving as to grants from the proprietaries of Pennsylvania, of lands lying south and within a quarter of a mile of said line, where the grantees, or those claiming under them, were in the actual possession of such lands. (62)

Proceedings of Commissioners under it, and their final report. To carry this agreement into effect, not less than three nor more than seven commissioners were to be appointed by each of the parties to the agreement, within thirty days after its execution. These commissioners were accordingly appointed, and assembled at New Castle for the commencement of their operations, on the 19th November, 1760: and were from time to time engaged in the performance of the duty, until the 9th November, 1768, when their labors were closed by their final report to the proprietaries. During this period, they caused to be kept a minute account of all their deliberations, instructions and proceedings, relative to the adjustment of the various parts of these intricate boundaries, which has been preserved, and is worthy of preservation as a model of accuracy and fidelity in the record of public transactions. (63)

(62) This agreement of 1760, which fully illustrates the progress of the controversy from the agreement of 1732 down to that period, is deposited in the Council chamber, and has also been recorded at large amongst the land records of Maryland, in Liber J. C. No. E, in pursuance of the directions of resolution 7th, of November session, 1788. To give effect to the savings of the rights of settlers under the compact, provision is made by the Act of 1785, chap. 66, for issuing patents for lands held under Pennsylvania grants to those entitled, upon the payment of office fees.

(63) The commissioners originally appointed were, on the part of Maryland, his excellency Horatio Sharpe, Benjamin Tasker, Jr. Edward Lloyd,



The result of their labours in the definitive adjustment and actual location of these boundary lines, cannot be more accurately or succinctly stated than it is in their own report, from which we extract and subjoin that part of it which relates to the location of the lines. After setting out in detail the authority under which they acted, they report as follows:

"1st. We have completely run out, settled, fixed and determined a straight line, beginning at the exact middle of the due east and west line mentioned in the articles of the fourth day of July one thousand seven hundred and sixty, to have been run by other commissioners formerly appointed by the said Charles Lord Baltimore and the said Thomas Penn and Richard Penn, across the peninsula from Cape Henlopen to Chesapeake Bay, the exact middle of which said east and west line, is at the distance of thirty-four miles and three hundred and nine perches from the verge of the main ocean, the eastern end or beginning of the said due east and west line: and that we have extended the said straight line eighty-one miles seventy-eight chains and thirty links up the peninsula, until it touched and made a tangent to the western part of the periphery of a circle drawn at the horizontal distance of twelve English statute miles from the centre of the town of New Castle, and have marked, described and perpetuated the said straight or tangent line, by setting up and erecting one remarkable stone at the place of beginning thereof, in the exact middle of the aforesaid due east and west line according to the angle made by the said due west line, and by the said tangent line; which stone, on the inward sides of the same facing towards the east and towards the north, hath the arms of the

Robert Jenkins Henry, Daniel Dulany, Stephen Bordley and the Rev. Alexander Malcolm: and on the part of the Penns, the Hon. James Hamilton, William Allen, Richard Peters, Benjamin Chew, Lynford Lardner, Ryves Holt and George Stephenson, Esqrs. In the progress of this tedious and protracted work, the Rev. John Barclay, George Stuart, Daniel of St. Thomas Jenifer and John Beale Bordley, were appointed on the part of Maryland, to fill the vacancies occasioned by the declension of several of its original commissioners: and the Rev. John Ewing, William Coleman, Edward Shippen and Thos. Willing, Esqrs. were appointed to fill vacancies similarly occurring in the Pennsylvania board. The accurate record of their transactions alluded to in the text, which contains a journal of their proceedings, authenticated at the close of each day by the signature of every commissioner present, has been preserved in the Land Office of this State.





said Thomas Penn and Richard Penn graved thereon, and on the outward sides of the same facing towards the west and towards the south, hath the arms of the said Frederick Lord Baltimore graved thereon: and have also erected and set up in the said straight or tangent line, from the said place of beginning to the tangent point, remarkable stones at the end of every mile, each stone at the distance or end of every five miles, being particularly distinguished by having the arms of the said Frederick Lord Baltimore graved on the side thereof turning towards the west, and the arms of the said Thomas Penn and Richard Penn graved on the side thereof turning towards the east, and all the other intermediate stones are marked with the letter P on the sides facing towards the east, and with the letter M on the sides facing towards the west, and have fixed in the tangent point a stone with the arms of the said Frederick Lord Baltimore graved on the side facing towards the west, and with the arms of the said Thomas Penn and Richard Penn graved on the side facing towards the east.

"2dly. That from the end of the said straight line or tangent point, we have run out, settled, fixed and determined, a due north line of the length of five miles one chain and fifty links, to a parallel of latitude fifteen miles due south of the most southern part of the city of Philadelphia, which said due north line intersected the said circle drawn at the distance of twelve English statute miles from the centre of the town of New Castle, one mile thirty-six chains and five links from the said tangent point, and that in order to mark and perpetuate the said due north line, we have erected and set up one unmarked stone at the point where the said line intersects the said circle, three other stones at a mile distance from each other graved with the letter P on the sides facing the east, and the letter M on the sides facing the west, between the said place of intersection of the said circle and the said parallel of latitude, and a third stone at the point of intersection of the said north line and parallel of latitude, which last stone on the sides facing towards the north and east, hath the arms of the said Thomas Penn and Richard Penn graved thereon, and on the sides facing towards the south and west hath the arms of the said Frederick Lord Baltimore graved thereon.





"3dly. That we have run out, settled, fixed and determined, such part of the said circle as lies westward of the said due north line, and have marked and perpetuated the same, by setting up and erecting four stones in the periphery thereof, one of which, at the meridian distance of one mile from the tangent point, is marked with the letter P on the east and the letter M on the west sides thereof.

"4thly. That we have run out, settled, fixed and determined, a due east and west line, beginning at the northern point or end of the said due north line, being the place of intersection of the said north line, with the parallel of latitude, at the distance of fifteen English statute miles due south of the most southern part of the city of Philadelphia, and have extended the said line, two hundred and eighty miles eighteen chains and twenty-one links due west from the place of beginning; and two hundred and forty-four miles thirty-eight chains and thirty-six links, due west from the river Delaware; and should have continued the same to the end of five degrees of longitude, the western bounds of the Province of Pennsylvania, but the Indians would not permit us. And that we have marked, described, and perpetuated the said west line, by setting up and erecting therein, stones at the end of every mile, from the place of beginning, to the distance of one hundred and thirty-two miles, near the foot of a hill, called and known by the name of Sideling hill; every five mile stone having on the side facing the north, the arms of the said Thomas Penn and Richard Penn graved thereon, and on the side facing the south, the arms of Frederick Lord Baltimore graven thereon, and the other intermediate stones are graved with the letter P on the north side, and the letter M on the south side, and that the country to the westward of Sideling hill, being so very mountainous, as to render it in most places extremely difficult and expensive, and in some impracticable, to convey stones or boundaries which had been prepared and marked as aforesaid, to their proper stations, we have marked and described the said line from Sideling hill to the top of the Allegany Ridge, which divides the waters running into the rivers Potowmack and Ohio, by raising and erecting therein, on the tops of ridges and mountains, over which the said line passed, heaps or piles of stones or earth, from about three and an half to four yards in diameter, at bot-



tom, and from six to seven feet in height, and that from the top of the said Alleghany Ridge westward, as far as we have continued the said line, we have set up posts at the end of every mile, and raised round each post, heaps or piles of stones, or earth of about the diameter and height before mentioned." (64)

Thus were finally adjusted what are now the eastern and northern boundaries of Maryland, which separate it from the states of Delaware and Pennsylvania respectively. Yet even

New sources of controversy.

this controversy had not terminated before the proprietary of Maryland found himself involved in another, menacing the loss of another fertile portion of his province. Like the bayed lion, he had only shaken one adversary from his mane, to turn him to another who was biting at his heel. A whole century had been spent in fruitless contests for his northern and eastern territory, and he was now to begin another contest for his southern and western boundary, which has not terminated even at this day, and is likely to be of equal endurance with the former. This related to, and grew out of the description of "the first fountain of the Potowmack," as the common terminus of the western and southern boundaries of Maryland: and was predicated upon a grant of the northern neck of Virginia, to the origin of which it will be necessary briefly to refer.

It was first granted by Charles II. in the first year of his reign, or rather, the first year after Charles I. was beheaded, for Charles II. was then a monarch without a crown, a king without subjects, and a grantor without territory. He was then emphatically Charles "*Lackland*," and in an admirable condition for making grants to secure the adhesion of the followers of his fallen fortunes.

(64) This east and west line between Pennsylvania and Maryland, is the line commonly called by the name of Mason and Dixon's line, which has been so often referred to, in political and other discussions, as the line of demarcation between the northern and southern, or the slave-holding and non-slave-holding states. It is so called, because this part of the survey was accomplished under the direction of Messrs. Mason and Dixon, who were specially employed by agreement between the proprietaries of the two states, and were under their special instructions taken into the employ of the commissioners in November, 1763. At that period, the principal part of the peninsular surveys had been completed, and hence this line is peculiarly called Mason's and Dixon's line.





Grant of the northern neck. The grantors in this grant were Lord Hopton, Lord Jermyn, Lord Culpepper, Sir John Berkeley, Sir William Morton, Sir Dudley Wyatt, and Sir Thomas Culpepper, and the territory granted, was, "all that tract of land, lying and being in America, and bounded within the heads of the rivers Rappahannock and Quiriough or Potowmac, (the courses of the said rivers as they are commonly called and known by the inhabitants) and the "Chesapeake bay." After the restoration of Charles, the validity of the grant was drawn in question, and the title to it having passed, by the death of some of the proprietors, and by purchase from others of them, to the earl of St. Albans, Lord Berkeley, Sir William Morton and John H. Tretheway, Esquire, the original grant was surrendered by them for the purpose of receiving a new grant for the same territory, for which they accordingly obtained letters patent from king Charles, in May, 1669. Although Virginia was, at the period of these grants, a royal government, (as the colonial governments, which were directly administered by the crown, were styled :) and being such, the power of the crown to grant, at its pleasure, the vacant lands within its jurisdiction, was unquestionable, they yet occasioned great discontents amongst the colonists of Virginia. The grant of Maryland, as we have already seen, was long resisted as a dismemberment of the colony; and being followed by these grants, they began to apprehend their reduction to a secondary rank amongst the colonies. Yet the grants of the northern neck carried with them nothing but the rights of soil, and the incidents of ownership, for they were expressly subjected to the jurisdiction of the government of Virginia. The discontents fermented by this and other acts of the crown, rose to so high a pitch, that agents were sent to England, in April, 1675, by the Assembly of Virginia, who were instructed amongst others things to remonstrate against the grant, and to request that the Assembly might be authorized, by act of incorporation, to purchase it from the proprietors. Their requests were favourably received, but the gratification of them was prevented by causes, to detail which would be foreign to our present purposes. It will suffice to say, that the title to the whole having vested in Thomas Lord Culpepper, a new patent for it was granted to him by King James II. in the fourth year of his reign, and that from him it descended





to his daughter and only child, who was married to Lord Fairfax, and thus passed into the Fairfax family. (65)

These grants of the Northern Neck, as it will be perceived, call for the lands lying on the south side of the Potomac to its head, and in this call there was nothing inconsistent or clashing with the call of the charter of Maryland. The call of the latter is to the first fountain or source of the Potomac, which was of course its head, and therefore a conflict between these two grants could only arise from the extrinsic difficulty or doubt, as to the true location of the first fountain or head. As then, the patents for the northern neck did not appear upon their face to be infractions of the proprietary's chartered rights, and could only become so by disputes about the true location of the common call, they were not calculated to excite his jealousies, or to beget difficulties between him and the claimants under the former, until the settlements began to extend towards the head of the Potomac. Hence, it does not appear that his attention was directed to the ascertainment of the first fountain, or that he was involved in any controversies about it, until the middle of the eighteenth century. Early in that century, Lord Fairfax had visited Virginia for the purpose of surveying the grant of the Neck; and it appears from the recitals of an act of the Virginia Assembly, in the year 1736, that at that period, he and his predecessors, through their agents and attornies, had already granted a considerable portion of it. (66) In 1748, a Land Office for the grant of the lands in the neck, was formally opened by Fairfax, and kept open until his death, in 1781, which was conducted in his name, and at his expense, as the proprietor of the northern neck. (67)

The extension of the claim under these grants to the north branch. A wide field being thus opened to the spirit of enterprise and speculation, the grants were soon extended so far to the west as to raise the question as to the lo-

(65) For the history of these grants, of which a summary is given above, see Chalmer's, 330, and notes. Keith's History of Virginia, 166. Recital of the 13th Chapter of Acts of Assembly of Virginia for the year 1736, and the case of Fairfax's Lessee against Hunter's Devisee, 7th Cranch's Reports, 603.

(66) Keith's History of Virginia, 166. Virginia Revised Code of 1812. 1st vol. 8 to 14.

(67) See the special verdict in case of Fairfax's Devisee, 7 Cranch, 607



cation of the head of the Potomac, and at the same moment that Frederick Lord Baltimore, the then proprietary, was endeavouring to ascertain the exact effect which the agreement of 1732, relative to his northern boundaries, would produce upon his grant, we find him directing his attention also to its western limits. In his instructions to governor Sharpe, which were presented by the latter to his council in August, 1753, he alludes to the Fairfax grant, and remarks that he had been informed that the government of Virginia had undertaken to ascertain the limits of his charter: and that the commissioners who had been appointed for this purpose, instead of stopping at the South Branch, which runs from the first fountain of the Potomac, had gone even to the North Branch—that if any such adjustment was made, he had no knowledge of his predecessor being a party to it; and therefore concluded by it, that if it were made with the privity of the latter, it would be invalid, as the former proprietary held the province only as a tenant for life under a strict settlement. He therefore directs the governor to obtain early intelligence of the manner in which the boundaries were settled by these commissioners, and to apprise lord Fairfax of his desire to adjust that boundary with him: and he at the same time commands him to “keep a good look out, and prohibit settlements under Fairfax in the country north of the South Branch.” (68) These instructions being laid before the council, in order to a compliance with them, they endeavoured to collect information with reference to the relative extent of the north and south branches of the Potomac, and for this purpose they summoned before them Col. Thomas Cresap, one of the settlers in the western extremity of the State, who was supposed to be familiar with the course and extent of these branches. He accordingly attended at their next session in September, 1753, and informed them, that in his opinion the south branch of the Potomac was the longest stream, because it continued, as he thought, the longest stream even from its mouth, and ran about sixty miles further in a north eastern direction than did the north branch. (69) Thus informed, the governor addressed a letter to lord Fairfax, in which, after apprising him of the instruc-

(68) Council Proceedings of Maryland, Liber T. R. and W. S. page 12.

(69) Council Proceedings, Liber T. R. and W. S. 13.





tions received from the proprietary, he remarks that the information, which he had obtained, induces him to believe that there has been some mistake in fixing the fountain head of the Potomac at the source of the north branch, inasmuch as the relative length of the two branches, and other circumstances, concur to show that the south branch, commonly called "*Wappacomo*," is the main and principal course of that river. He therefore expresses the hope, that his lordship will concur with him in causing such an examination of these branches to be made, as will put the question to rest. (70)

The adjustment of the boundaries of Fairfax's grant, which is alluded to in these instructions of the proprietary, was one of the nature of which he appeared to have been wholly unapprised. His instructions are predicated upon the supposition, that the surveys might possibly have been made with the knowledge and concurrence of his predecessor: and hence he denies the power of the latter to enter into any arrangements as to the boundaries which could extend beyond his life estate, or conclude those in the remainder. This caution was wholly unnecessary; for it does not appear, from a full examination of all the proceedings of the proprietary government, on record in the province, that the proprietors of Maryland were ever, in any wise, privy to any settlement of the boundaries which contemplated the extension of Fairfax's grant to the north branch: nor are we aware that it has ever been alleged. The only adjustment, which ever took place, was one, growing out of controversies between Fairfax and the government of Virginia, having reference, solely, to the conflicting territorial claims, and concluded by proceedings, to which Baltimore was in no wise a party, and of the existence of which, he and his government appear to have had no knowledge, before they were terminated. The histories of Virginia are singularly barren, in all that relates to this adjustment between the crown and lord Fairfax; and there are no published or unpublished documents within our reach, which enable us to present it in detail, or to illustrate fully the character of the controversy which it termi-

(70) Jefferson's Notes on Virginia, 193 and 194.





nated. Mr. Jefferson has given us a reference to the several documents connected with it; but in such a manner, as to indicate, rather, that he merely knew that they were in existence, than that they had come under his personal observation. (71) Enough, however, is known, to enable us to state the general result, which alone is important in connexion with our present enquiry. It appears that in 1733, a petition was preferred by Fairfax to the King in Council, praying, that a commission might issue for running and marking the dividing line, between his grant and the province of Virginia, and that the commission was accordingly issued, and the survey made and reported in August, 1737. In December, 1738, these reports were referred to the consideration of the council for plantation affairs, by whom a report was made in 1745, which determined the head springs of the Rappahannock and Potomac, and directed that a commission should issue to extend the line. This report was confirmed by the King in Council: and the line being adjusted in conformity to it, an act was passed by the General Assembly of Virginia, in the year 1748, which adopts the order in Council, and confirms all previous grants made by the crown, of lands lying within the limits of the Fairfax grant. (72) The line thus settled, adopted the north branch of the Potomac, as the first head of that river, by which location of it, thus pushing over the Fairfax grant to this branch, without even considering, much less respecting, the claims of the proprietary of Maryland, each of these interested parties were to be benefitted at his expense. On the one hand, the territory subject to the jurisdiction of Virginia was enlarged; and on the other, Fairfax gained a more valuable territory lying between the north and south branch, than that which he lost lying east of the head of the south branch, and between it and a meridian passing over the head of the north branch. During all this period, the situation of the proprietary of Maryland afforded to these parties the most favourable opportunity for practising this usurpation of his rights. His petition for the confirmation of his grant, so as to exclude the claims of the Penns, was then pending before the King in Council, to await the issue of the proceedings in Chancery upon the agreement

(71) Jefferson's Notes on Virginia 193 and 194.

(72) Jefferson's Notes 103 Virginia, revised Code of 1812, page 14.



of 1732, which was all the while progressing. The momentous character of that proceeding was well calculated to engross his attention, and to divert it entirely from these ex-parte transactions, on the part of Fairfax, which did not upon their face even profess to interfere with his grant; and to the purpose of which, he was awakened only by the knowledge of the actual location from the north branch. His death, shortly afterwards, prevented the proprietary from adopting any decisive measures for the vindication of his rights: but the instructions of his successor in 1753, immediately after his accession to the proprietaryship, exclude all inference of acquiescence in these unwarrantable acts; and manifest a full determination on his part, to exclude all settlements which might be attempted under them upon his territory.

The letter of the governor of Maryland to Fairfax shews us, that this determination of the proprietary was promptly met, and seconded by his officers: but we are left utterly in the dark as to the further progress of the negotiation thus opened. From this period, until the revolution, the existing records of our Council and Assembly trans-  
Causes which suspended the controversy between the two proprietaries until the revolution. actions are entirely silent as to this contest, of which an accurate history can be collected, only from the records of the English Council. We know only that Fairfax continued to adhere to the line, as adjusted between him and the crown, and to issue grants for the disputed territory; and that the proprietary of Maryland continued to assert his claims to the first fountain, be that where it might, and waited but a favourable opportunity for bringing the subject before the King in Council. For some years after the controversy was opened, the attention of the government of the province was wholly engrossed with its internal concerns, and its efforts, in common with the other colonies, in the prosecution of the French and Indian wars: but these being terminated by the definitive treaty of peace, concluded at Paris in February, 1763, it is probable, that by the restoration of peace upon the borders, the settlements of Maryland would soon have been pushed to its extreme limits. Had this occurred, there would soon have ensued a collision between the grants of the proprietary and of Fairfax; and this collision would at once, either have brought about an amicable adjustment of the boundaries, or have forced it for determination before the





King in Council. At this moment, when the conflict seemed inevitable, two causes for its suspension arose, which held this difference in abeyance, until the revolution came to convert it into a contest between free and independent states. By the treaty of Paris in 1763, above alluded to, a large territory was ceded to the English, within which newly acquired territory, it became necessary to organize colonial governments. For this and other purposes, a proclamation was issued by the king, in October, 1763, by which, and to enable the English government to carry into effect its engagements to the Indians, the colonial governments generally, were prohibited from granting any lands lying west of the sources or heads of any of the rivers, flowing into the Atlantic from the west, and north-west. (73) In the ensuing April, instructions were issued by governor Sharpe, to the Judges of the Land Office, which set forth, that the proprietary was desirous to have reserved for him, ten thousand acres of land in the western part of Frederick County, to be held as a manor; and that he had therefore instructed the surveyor of that county not to execute any warrant on any lands lying beyond Fort Cumberland, until that reserve was taken off. This general interdict of the crown, and the reserve to the proprietary, each tended to check the progress of the settlements, in the direction of the debateable territory; and the proprietary and his officers now waited for the first favourable opportunity of bringing the question before the council, which might present itself. In 1771, a survey of the two branches was made by Colonel Cresap, under the direction of the proprietary: Our records do not distinctly inform us, for what purpose it was made. The survey itself, has been preserved in our Land Office, and presents a very accurate view of the courses of the two branches, through the heads of which, meridians are drawn, for the purpose of determining their relative extent to the west. From the year 1753 up to this period, it appears to have been continually held on the part of Maryland, that the south branch was the most western source,

(73) This proclamation was not intended to alter the boundaries of the Colonies, but was a mere temporary arrangement, suspending for a time the settlement of the county reserved. See Supreme Court of United States, in *Fletcher vs. Peck, &c.* Cranch 142.





and therefore, *the first fountain*: but the survey of 1771 appears to have been the first *actual* examination and survey of the two branches, which was made with this view. The papers, connected with the settlement of the expenses of the survey, shew, that it was made under the directions of the proprietary government; and it seems probable that it was made, both for the purpose of informing the proprietary as to the true location of the branches, and of furnishing a basis for any application which might be made by him to the King in Council. In March, 1774, the subject of the reserve, on the lands lying westward of Fort Cumberland, being brought before the proprietary's Board of Revenue, which had been organized in 1766, 67, that Board determined, that the object of the reserve had been accomplished, in the surveys actually made for the proprietary; and, therefore, took off the reserve. This determination led to a correspondence between them and Mr. Jenifer, the proprietary's agent, which exhibits the course of the proprietary before that period, and illustrates his motives for forbearance. Mr. Jenifer disapproved of the course pursued by the Board, in throwing the western lands open for grant; and in the hope of dissuading them from it, he addressed them a letter in May, 1774, in which he states, that he had heard, that grants had been issued since their decision, under which, persons were not only making surveys to the west of Fort Cumberland, but even across the Alleghany mountains, and west of the meridian of the north branch. Such surveys he considered as not only in contravention of the king's proclamation of 1763, but also at war with the policy of the proprietary. The proprietary, says he, has hitherto cautiously avoided giving offence by granting lands westward of the line, settled between the crown and Lord Fairfax; and although there is not a doubt, that the south branch is the fountain head, and the point at which the meridian for the western boundary ought to start, yet the proprietary is waiting for a favourable opportunity of bringing it before the King in Council. In conclusion, he expresses the hope, that some recent territorial differences between Virginia and Pennsylvania, under which, each government had arrested those acting under the authority of the other, would bring about this much wished for occasion. The reply of the Board through Mr. Steuart, relies upon the confession of the Agent, as



to what are the proper limits, and declares, that it does not become either them or the agent, to do any act which may have a tendency to restrict those limits. "The proprietary, (say they,) has lately been at the expense of running a line to the south branch, and if the Virginians hear that he doubts about the extension of his limits, it will be an encouragement to them to begin to throw stones." Mr. Jenifer still continued to press upon them the propriety of delaying this step, and urged, that as the proprietary had not, before the decision of the Board, made any grants of lands, lying west of the north branch, a delay of the measure could not weaken the proprietary claim, or encourage the pretensions of the Virginians. The Board still adhered to their determination, and large grants of land on the reserve were immediately made, and continued to be made, until October, 1774, when instructions were received from the proprietary, directing the Judges of the Land Office to suspend all further grants of the reserved lands, and to prepare and transmit to his guardians an accurate list of all warrants issued under the order of the preceding March, and of all settlements and locations made within the territory thrown open by that order, since the year 1763. (74)

So stood the controversy between the proprietaries, when the American Revolution came to elevate the provinces of Maryland and Virginia, to the rank of free and independent states. Fairfax was still the proprietor of the Northern Neck, and in the full exercise of all the powers incident to his absolute ownership of the soil, subject to the jurisdiction of the royal government of Virginia: and the effect of the revolution upon his grant was to substitute the jurisdiction of the state government, whilst it left him in the full enjoyment of the grant. By this change, the question as between the two states, was, as to Virginia, merely one of jurisdiction over the debateable territory, and so remained until the death of Fairfax in 1781. It would be useless, in our present inquiry, to pass in review the legislation of Virginia as to the Northern Neck, subsequently to the death of

(74) The proceedings of the Board of Revenue are preserved, and may now be found in the Land Office. The titles acquired under warrants, issued between the 22d of March and the 6th of October, 1774, to affect lands lying westward of Fort Cumberland, were saved by the act of 1784, Chap. 75.





Fairfax. It will suffice to say, that it was by him devised to Denny Fairfax; and that, in consequence of his alienage and absence from the province, several acts were passed by the Assembly of Virginia, by the last of which, the act of 1785, chap. 63, the state of Virginia claimed the ownership, and made provision for the grant, of vacant lands in the Northern Neck. All of these acts were subsequently declared by the Supreme Court of the United States to be insufficient to divest the title of Fairfax's devisee; and the defect in his title, because of alienage, was held to be cured by the Treaty of 1794. (75) These acts, which left the title in the devisee, from whom it passed to his grantees, are here adverted to only for the purpose of shewing that as early as 1785, the State of Virginia, having assumed to herself the ownership of the vacant lands in the Northern Neck, stood clothed with claims similar to those of the State of Maryland.

Returning to the consideration of this contest for territory, which, by the force of the revolution, had become a subject for adjustment between these sovereign, independent, yet sister states of the confederacy, we are now to unfold the causes which have delayed that adjustment even until this day. That it should now be where the revolution found it, may excite our surprise. The history of the transaction, if it removes the wonder, will also tell us where the censure lies. It has been seen, that, up to the era of the revolution, the claim of the proprietary of Maryland to the first fountain of the Potomac, *be that where it might*, had never been for a moment relaxed, and that, whatever the adversary possession of the disputed territory, it was held in the face of a continual claim and assertion of right on his part, and against his unceasing efforts to reclaim it. The revolution having cast upon the State of Virginia the adjustment of the boundary, under circumstances such as these, left her no equitable objections to urge against the claim of Maryland to the full extent of her territory, as defined by her charter. Hence, in the constitution of Virginia, adopted in June, 1776, we find a full and express recognition of the right of Maryland "to all the territory contained within its charter, with all the

(75) Fairfax's devisee against Hunter's lessee, at February term, 1813, reported in 7th Cranch, 507.





rights of property, jurisdiction and government, and all other rights whatsoever to the same, which might at any time theretofore have been claimed, by Virginia, excepting only the free navigation and use of the rivers Potomac and Pocomoke, with the property of the Virginia shores or strands, bordering on either of said rivers, and all improvements which have been or shall be made thereon." (76)

The object and necessity of this exception will at once be apparent, when we reflect upon the new relation in which the two

These reservations secured to her by compact with Maryland in 1785.

provinces now stood to each other, as sovereign states; and the promptitude with which the desire of Virginia to keep open to her citizens the enjoyment of these rights of navigation and their incidents, was met and reciprocated by the State of Maryland, places her conduct in a very favourable point of view. (77) In the very next year after this constitutional reservation, by a resolution of the Assembly of Maryland, Daniel of St. Thomas Jenifer, Thomas Stone and Samuel Chase, were appointed commissioners on the part of Maryland for the purpose of adjusting with the commissioners on the part of Virginia (George Mason and Alexander Henderson) "the navigation of, and jurisdiction over, that part of the Chesapeake Bay which lies within the limits of Virginia, and over the rivers Potomac and Pocomoke," subject to the ratification of the general Assembly. (78) The result of the conferences of these commissioners was a compact, formed at Mount Vernon, on the 28th March,

(76) Virginia Constitution of 1776, article 21st.

(77) It is, however, proper to state, that this reservation of Virginia was not well received at first. In October, 1776, the subject of it was brought under the consideration of the convention which formed our present State Constitution, by which several resolves were adopted, asserting in the broadest terms the right of Maryland to all the territory included in the charter, to the sole and exclusive jurisdiction over all the waters, bays, &c. within that territory, and especially to the Potomac and such part of the Pocomoke as falls entirely within its territory; and declaring that the river Potomac, and that part of the Chesapeake Bay lying between the capes and the northern boundary of the State, or so much thereof as is necessary to the navigation of the Potomac and Pocomoke, ought to be considered a common highway, free for the people of both States, without being subject to any duty or charge. See Hanson's Edition of the laws, which includes the journal of this Convention.

(78) Resolution 6th of October Session, 1777.



1785, which accomplished all the purposes of their appointment, and which received the ratification of the legislatures of both states at their next session. (79)

This compact contains a series of commercial regulations, constituting a treaty of commerce predicated upon the basis of free and equal rights in the navigation of these rivers, to be maintained for their common benefit, by their common efforts, and at their joint expense, and securing these in a manner eminently calculated to promote and establish an harmonious and beneficial intercourse. These regulations have been superseded by the adoption of the Constitution of the United States, which devolved upon Congress the power of regulating commerce with foreign nations, and among the several States; but they are worthy of all commendation, and deserve to be the most cherished part of our history, when we remember, that to these may be traced the germ of the causes which called that constitution into being, which freed us from that "*rope of sand*" the confederation, and which placed us under the shadow of that blessed Union, by *whose guidance we have been conducted to happiness as a people, and to peace, power and prosperity, as a nation.* Besides these commercial regulations, it contains provisions for the apprehension and punishment of offenders, for the arrest of absconding debtors, and for the security and protection of the river and bay possessions of the citizens of the two States, which require a passing notice. It provides as to *all offences committed on that part of the Chesapeake bay which lies within the limits of Virginia, or that part of it where the line of division from the south point of Potomac river called Smith's point, to Watkin's point near the mouth of Pocomoke river, may be doubtful, or committed on the Pocomoke within the limits of Virginia, or where the line may be doubtful,* that the jurisdiction over the same, if committed by persons, not citizens of Virginia, against the citizens of Maryland, shall belong to the courts of Maryland, having legal cognizance of such offences, and so vice versa: and that if committed by a citizen of Maryland against a citizen of Virginia, or vice versa, the jurisdiction over the offence shall be-

(79) Virginia Acts of December session, 1785, chap. 18, and Maryland. A. A. of 1785, chap. 1st.





long to the courts of the State of which the offender is a citizen. It establishes the same regulations as to offences committed on the Potomac river, except in cases of offence or crime by a person not a citizen of either State, against a person not a citizen of either, as to which the jurisdiction shall attach in the State to which the offender is first brought. It provides as to all persons absconding or flying from justice in any civil or criminal case, or attempting to defraud creditors by the removal of property, that such person or property so flying or removed, may be seized upon any part of said bay or said rivers, by process of the State whence the party fled, or the property was removed. It permits the process of either State to be served any where; on said rivers, on the person or property of any one not being a citizen of the other State, so that the process of both States may run over the whole extent of these rivers, as against all persons not citizens of either State. And lastly, as to the riparious possessions of the citizens of the two States, it declares: 1st. That the citizens of each State shall have full property in the shores of the Potomac, adjoining their lands, with all advantages and emoluments thereto belonging, and the privilege of making and carrying out wharves and other improvements, provided they do not obstruct or injure the navigation of the river. 2dly. That the rights of fishing in said river shall be open to the equal enjoyment of the citizens of both States, provided that it be not exercised by the citizens of one State, to the hindrance or disturbance of the fisheries on the shores of the other, and also that the citizens of neither State shall have the right to fish with nets or seines on the shores of the other. 3dly. That for any violence, injury or trespass to, or upon the property or lands of any citizen of either State, adjacent to the bay or the said rivers, or to any person upon such lands, committed by any citizen of the other State, upon proof of due notice to the offender, to appear and answer in any court of record, or before any magistrate having cognizance of such injuries, &c. may enter the appearance of such offender, and proceed to trial, as if the offender were served with legal process, and the judgment so rendered shall be valid against the person and property of the offender in both States, and execution may be issued as in other cases, or upon a transcript of the judgment properly au-





thenticated, produced to any court or magistrate of the State where the offender resides, having jurisdiction in the State or county where he resides, in similar cases, such court or magistrate may issue execution thereon as upon its or his own judgment.

Efforts for a settlement of the boundary from the period of this compact until the passage of the act of 1818. Thus by this compact, irrevocable, except by the assent of both States, all differences were ended which could arise about the rights reserved by Virginia, under her constitution; and Maryland was now, by the concessions of that very constitution itself, as well as by the intrinsic efficacy of her charter, confessedly entitled to all the territory which fell within her chartered limits, subject to the compact. Had she known and pursued her interests, this compact would never have been formed without making the adjustment of the western boundary a part of it; and had the consideration of it been introduced into the negotiation, and its settlement insisted upon by Maryland, it would doubtless have been conceded. Virginia was too much alive to the deep interests which she had staked upon that negotiation, and which might be lost by its failure, to have hazarded all for an interest comparatively so unimportant, as her claim to mere jurisdiction over a portion of what was then her remote territory. That it should have been passed by, whilst a subject so intimately connected with it was under consideration, and that it should not have been brought up, even as a subject matter for negotiation, until 1795, is truly surprising. (80) In that year, by a resolution of the General Assembly of this State, Messrs. Pinkney, Cooke and Key, were appointed commissioners on the part of this State, to meet such commissioners as might be appointed on the part of Virginia, with power to adjust, by compact between the two States, the western and southern limits of this State, and the dividing lines and boundaries between it and Virginia; and also any claim of either State to territory within the limits of the other; and in the event of agreement, the compact was to be reported to the Legislature for its confirmation. Delay still followed delay, Mr. Pink-

(80) This delay may in some measure be accounted for, by the reservations of land made by the State, to enable her to fulfil her engagements to the officers and soldiers of the Maryland line.



ney having left the province, and Mr. Cooke having declined acceptance; in 1796, Charles Carroll of Carrollton, and J. T. Chase, Esqrs. were appointed in their stead. (81) Mr. Key removed from the State, and Messrs. Carroll and Chase declined acceptance, and thus the State was again left without commissioners until 1801, when by a resolution of that year, the power of appointment was given to the governor and council. Messrs. Duvall, McDowell and Nelson, were now appointed commissioners, and a correspondence upon the subject took place between governors Mercer and Monroe. The result of it was, that a resolution was passed by Virginia, authorising the appointment of

(81) Mr. Cooke's letter of declension, which was, by the vote of the House of Delegates, directed to be recorded on its Journals, contains some interesting statements, in relation to the extent of territory dependent upon this controversy. Yet, although it purports to be founded upon an examination of the whole question, it contains some erroneous statements. In adverting to the exploration of the country by colonel Cresap, he states that Cresap, judging more from appearances, than from any actual survey, reported in favour of the north branch, and that it was for some time afterwards supposed to be the first fountain. In this, he is entirely in error. Cresap was examined before the Council in 1753, and made an actual survey in 1771: and on both occasions decided in favour of the south branch. Nor do our records show that he was examined on this subject, or employed for this purpose at any other time; or that there ever was a period in the province, when the north branch was held to be the first fountain. Wherever the subject is alluded to, the contrary opinion is universally maintained. As this letter is valuable, not only on account of the facts which it sets forth, but also because it contains the opinions of Mr. Cooke, who was a distinguished lawyer, as to the effect produced upon the claim of Maryland, by the prior occupancy and long continued possession under the Fairfax grant, it is here subjoined.

*To the Honorable the Senate and House of Representatives of Maryland:*

GENTLEMEN,—

By a resolve of the Legislature, passed at the last session, William Pinkney and Philip Barton Key, Esquires, together with myself, were "appointed commissioners on the part of this State to meet" such commissioners as might be appointed for the same purpose by the commonwealth of Virginia, to settle and adjust, by mutual compact between the two governments, the Western and Southern limits of this State, and the dividing lines and boundaries between this State and the said commonwealth; and also to settle and adjust any claim of this State, on the said commonwealth, to territory within the limits of the other.

In the execution of this trust, I have thought it my duty, not only to acquire





commissioners to meet those appointed on the part of Maryland; but limiting their powers to the adjustment of the western line. Virginia was unwilling even to enter into a discussion of her right to the territory between the two branches, whilst Maryland went upon the broad principle of referring the whole subject to the commissioners. The power of the Virginia commissioners being thus restricted, governor Mercer deemed it unnecessary to

authenticate information of the nature of the possessions held under the Virginia grants of land, within the limits claimed by this State, but also to examine carefully the laws of nature and nations, that it might be known, how far those laws would affect the claim of this State, before such claim was formally made, or prosecuted, in case it could not be otherwise adjusted by an amicable settlement.

The true boundary between this State, and the State of Virginia, depends on the "single" question, which is the first fountain of the river Potowmack? A question which has hitherto rested upon opinion only, without any effectual step having been taken to ascertain the same. Many years ago, the late colonel Thomas Cresap was employed by the proprietor of Maryland to explore the country, and to report the facts that might lead to a decision on this subject; but the country then being little known, and in the possession of savages, it is probable he judged more from appearances, than from any actual survey of it; he reported in favour of the north branch, and for some time after, that was generally supposed to be the first fountain of the river Potowmack. Afterwards, however, a different opinion prevailed, and the late proprietors of Maryland always claimed the land, and in some instances made grants thereof, lying between the north and south branches of that river. At length, a negotiation commenced between the proprietor of Maryland, and Lord Fairfax, the then proprietor of that part of Virginia, respecting this subject; and by consent it would have been established, that the first fountain of Potowmack was at the head of the south branch of that river, if the crown of Great Britain had not been interested in the question, and therefore it became necessary to lay the circumstances then existing before the King and Council, and to obtain their approbation and concurrence before any effectual regulation could take place; and while matters were thus suspended, the revolution commenced, which finally deprived all parties of their interest in the subject.

During the war, the citizens of Virginia began to take up, and immediately after the peace to settle, the land between the north and south branches of Potowmack; and the whole of that country, containing 462,480 acres of land, hath ever since been, and now is, occupied and claimed by the State of Virginia, or persons holding under grants issued by that State. But if upon a full investigation of this subject, it shall be found that the first fountain of Potowmack is at the head of the north branch of that river, still it is of





request a meeting of the commissioners: and the negotiation ended. (82) At December session, 1803, this correspondence and the acts and resolutions of the two states to which it related, were referred to the consideration of a committee of the House of Delegates of Maryland, by whom a report was made, recommending the running of a provisional boundary line (by agreement with Virginia,) to start from the extreme western source of the north branch, which should be held to be the boundary line of the two States, until further and definitive measures could be taken to ascertain the southern boundary. (83) This report was not acted upon: and the subject does not appear to have been

essential consequence to this State, to have the real head or fountain of that branch of the river fixed and well ascertained. There are three springs, or small rivulets, that unite after running a small distance; and the possessions under the title of this State are at present confined to a meridian line drawn from the most southern of those springs, and the lands to the westward of that meridian line are taken up and held under grants issued by the State of Virginia, although both the other springs extend further to the westward, and one of them near three miles. Should this last mentioned spring be deemed the first fountain from whence a meridian line is to be drawn for our western boundary, it will give a country, in addition to what the State now possesses, of three miles broad, and upwards of thirty miles in length.

On reviewing the law of nature and nations, it will be found, that prior occupancy can give no title to Virginia in this instance; nor any length of time bar the claim of this State, if it is otherwise well-founded. Political laws in this, and in most other countries, regulate this subject among the citizens of their respective states; but it cannot be done between independent governments, unless by treaty.

Should the legislature of this State persist in the wish to settle the bounds of this State and Virginia, in the manner proposed by the resolve of the last session, (and which has been delayed by the State of Virginia not having made any appointment of commissioners for that purpose,) it will be necessary to appoint another commissioner in the place of Mr. Pinkney, who is now absent on public business, and some other person instead of myself, as it will not be convenient to me to attend further to the subject.

WILLIAM COOKE.

14th November, 1796.

(82) See the letter of governor Mercer of June 5th, 1802, and the executive communication of November, 1802, to the General Assembly in Council Chamber Records.

(83) Journals of the House of Delegates.



revived until 1810, when another resolution was passed similar to that of 1801, under which nothing was done; and the subject again slept until it was revived by Maryland in the Act of 1818, chap. 206.

This State had now become wearied with her efforts to reclaim the territory south of the north branch: and hence this Act of 1818, in proposing to Virginia the appointment of commissioners, agrees to adopt the most western source of the north branch, as the point from which the western boundary shall start. At December session, 1821, of the Assembly of Virginia, an Act was passed, which purported to meet and reciprocate this proposition of the State of Maryland; but was, in fact, materially variant from it. (84) The Virginia Act did in fact beg the whole question; and left nothing open for negotiation. The Act itself undertook to determine the point from which the line should start, and left nothing to the commissioners but the power of locating it in conformity to its instructions. They were specially instructed to commence the western boundary at a stone planted by Lord Fairfax on the head waters of the Potomac: and thus they were tied down to the old adjustment, between Fairfax and the crown. The Virginia Act was therefore entirely different from that of Maryland, which directed the commissioners to begin at the most western source of the north branch, be that where it might: and being dissimilar, it did not justify the appointment of commissioners on the part of Maryland. Our Act of 1818 expressly directed, that the appointment, on the part of this State, should be made only after Virginia had embraced its propositions by the passage of a similar act; and no Act could be considered similar, which did not confide to their commissioners the same powers of adjustment, and adopt the same basis of settlement. This was, however, overlooked by the executive of Maryland: and commissioners were appointed on the part of both States, who assembled on the head waters of the north branch in the summer of 1824. (85) Upon the instant of

(84) Acts of Assembly of Virginia at December session, 1821, chap. 14th, passed 28th February, 1822.

(85) The commissioners who acted on this occasion, on the part of Maryland, were Ezekiel Chambers and James Boyle, Esquires. Chancellor John-





their assemblage, it was discovered that the positive instructions to the Virginia commissioners would operate as a bar to all further proceedings. The Maryland commissioners came instructed to locate the western line from the most western source of that branch, whilst those on the part of Virginia were limited to Fairfax's location, without regard to the inquiry: "*whether it was or was not so located.*" Fairfax's stone is not in fact planted at the extreme western source: and even had it been so situate, it was scarcely consistent with the rights and dignity of Maryland to have entered into an adjustment with commissioners who were thus restricted without regard to the question of right. Maryland having by her Act offered to relinquish all claim to the territory south of the north branch, it was not to be expected after this concession, that she should adopt as the source of that branch, a point determined as such, by her interested adversaries, during the progress of the controversy. The spirit of amity and concession, which had characterised all her proceedings in her repeated efforts to close this controversy, had been met at every step, by one of obstinate adherence, on the part of Virginia, to the full extent of her pretended claims: and it did not become her dignity as a State, to submit herself implicitly to any terms which the latter might dictate. Her commissioners therefore properly insisted, that the whole question, as to the true source of the north branch, should be thrown open for investigation; and this being declined, the negotiation ended.

So rests the controversy even to this day: and the proffer of Maryland to confine herself to the north branch, as contained in her Act of 1818, being thus rejected by Virginia, she is remitted to her original rights. Hitherto the course of this

Present policy of Maryland. State has never contemplated aught but an amicable adjustment: and she has already made every advance towards this, except that of unqualified submission to the demands of Virginia. Every effort has failed: and the inhabitants of our western borders begin to feel more sensibly every day, the con-

son, who was joined with them in the commission, died when on his journey to the place of assemblage, to the deep regret of his fellow-citizens, amongst whom he was conspicuous for his abilities as a lawyer, and his worth as a man.





sequences of this protracted contest. It is a matter of reproach to the two States, that this boundary so extensive and important, should be unsettled to this day; and to Maryland it especially belongs to redeem herself from this reproach, by adopting on the instant, some decisive measures, to bring about its adjustment. If she is prepared to surrender all her claims, and to adopt the location of Virginia, her border citizens may well say: "*If it were done, when 'tis done, then it were well it were done quickly.*" If, on the other hand, she intends no such surrender, it is full time to rise in vindication of her rights. In the progress of this contest, the conduct of Virginia towards her, has not been characterised by that generous and liberal spirit which has been so conspicuous in her other transactions. Our citizens would deeply regret the necessity of an adversary proceeding against a sister State, which has held so high a place in our affections: yet in reviewing the conduct of our State, they will find no cause for censure. As to the *chartered* extent of Maryland, there can be little room for doubt. "*The first fountain of the Potomac*" is evidently a descriptive term intended to designate the most westerly source, and applies to the south branch, the source of which lies considerably west of that of the north branch. The extent of territory lying between the two branches, is estimated at *half a million of acres*, including some of the most fertile lands of Virginia. In the event of an adversary proceeding, the claims of Maryland will of course extend to her chartered limits; and the sovereignty over this extensive country; will be the high prize for the victor. The citizens of our sister State, will perhaps smile at pretensions so extensive: yet that they were once well founded can scarcely be doubted, and if so, it will be difficult to show in what way they have been lost. If this be admitted, Virginia can rest her claims only upon prior occupancy and long continued possession; and these will avail her but little in such a case as the present.

By some the opinion is maintained, that as between independent states or nations, one cannot acquire a title to the domain of the other merely by prior occupancy. In the letter of Mr. Cooke above given, it will be seen that he adopts this doctrine, and asserts broadly, "that if the claim of the State be well founded in its origin, no lapse of time

Extent of her  
present rights.



nor continuance of possession on the part of Virginia can bar that claim." The contrary opinion is maintained by Vattel: and is probably the correct doctrine as there explained and restricted. (86) The doctrine of prescription can only apply to a case of clear and unequivocal abandonment of possession, on the one part, sustained by proof of long, undisputed and uninterrupted adversary possession by the other: and this has never been the character of the Virginia possession. The claim was disputed from its very origin, and the territory was occupied under circumstances from which no inference of acquiescence, on the part of the proprietary of Maryland, can fairly be drawn. From the year 1753 to the revolution, the proprietary and his government continued to assert the Maryland claim, and were restrained from making grants of the disputed territory, only through apprehension of the interference of the crown, and because of the adjustment between the crown and Lord Fairfax. And if any doubts could arise from the possession of Fairfax, anterior to the revolution, they are all removed by the constitution of Virginia adopted in 1776, which in its 21st Article, after making certain reservations as to the navigation and use of the Potomac and Pocomoke, &c. expressly cedes and confirms to the State of Maryland: "*all the territory contained within its charter, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which may at any time heretofore have been claimed by Virginia.*" Thus then at the revolution, by the express concession of the State of Virginia, the claims of Maryland to her charter limits existed in their full force; and are sustained by an express surrender of all counter claims which Virginia might have. The reservations made by her, have all been gratified by the compact of 1785: and the claims of Maryland, so far as they rest upon her charter, are therefore doubly armed. From that period to the present, it will be apparent, from the review of the transactions of the two States already presented, that the claim of Maryland has never been relaxed, except by an offer to compromise, which was not accepted, and therefore cannot in any wise affect her right: and that there is nothing in the character of the Virginia possession, from which an abandonment of this claim can reasonably be presumed.

(86) Vattel, Bk. 2d, chap. 11th, sec. 147 to 151.





If, then, her rights under the charter retain their original vigour, unimpaired by the lapse of time or the occupancy of Virginia, the Constitution of the United States appears to present Remedies open to her. remedies, by which the extent of those rights can be readily determined. The claim of Maryland, as the successor to the proprietary rights, extends both to the right of soil and the jurisdiction: and it seems to be now well settled, that where there is a controversy between States involving the right of soil, the Supreme Court of the United States has original jurisdiction over it, and one State may in that court enforce such a right against another State of the Union. (87) It has been doubted whether upon such a right as that of mere sovereignty or jurisdiction, a State could proceed at law: but even in such a case, it has been held that there is at least an equitable remedy by bill praying to be quieted as to the disputed boundaries. (88) Besides this direct mode of bringing the question to an issue, there is also an indirect mode of producing a decision of it, which would eventually be equally as efficacious. It is but necessary for the State of Maryland to make a grant within the disputed territory, upon which a suit could immediately be instituted against those claiming it under a Virginia grant; and the question of superior right to grant would at once come up. It being then a case of conflicting claims under grants of different States, it might be at once translated to the proper Circuit Court of the United States; and thence (if of sufficient value,) to the Supreme Court for final determination. (89) These are the modes of proceeding open to Maryland, and if she still retains, and intends to adhere to her original claim, she should be prompt in the prosecution of it. All further hopes of obtaining it by concession are at an end: and whatever course she may resolve to adopt, should be at once determined upon. *What the boundary line may be, is not a matter of such moment to her citizens, as that it should be definite and undisputed.* In any issue of the contest, it would be the duty of Maryland to confirm all the anterior grants from the proprietaries of the neck. No attempt would be made to disturb titles so derived: and the

(87) 3d Dallas, 412. 4th Dallas, 3.

(88) Same.

(89) Constitution of the United States, Article 3d, section 2d, and Act of September 24th, 1789, section 12th.





contest would be mainly for the sovereignty of the territory. Thus respecting and protecting private rights, her claim would be stripped of all its harshness: and, if successful, whilst it enlarged and enriched her territory, would be a monument of her justice.



## CHAPTER II.

### OF THE CIVIL DIVISIONS OF THE STATE OF MARYLAND.

AN Enquiry into the territorial limits, within which the powers of the government of Maryland may be exercised, enters necessarily into the consideration of the extent and exercise of those powers. Hence the details of the preceding chapter were not only necessary (as a part of the history of the province of Maryland) to illustrate the causes of its grant, the circumstances under which that grant was made, and the origin, progress and issue of the several contests, which have abridged it to its present limits; but also to exhibit an accurate view of those abridged limits, to which the powers of government we are about to consider, must be confined in their exercise. The history of these controversies is wrapped up in musty records, to which but few of our citizens can have access, and which are in general too uninviting, to tempt even curiosity to explore that history through such channels. Yet the reader would look in vain elsewhere, for a knowledge of the present limits of the State, or of the causes of their variance from the calls of the charter.

The view, which has been taken, would suffice for the consideration of those powers, which may be peculiarly called "*State Powers*," as being undivided and extended over the whole State, by the act of the same officer. These, however, form but a small part of the power of the State government. In order to the proper exercise of a great portion of it, it has been found extremely convenient in some instances, and absolutely necessary in others, to subdivide it, not only with reference to the objects over which it is to be exercised, but also to the extent of territory. It is not possible for one man to exercise, in person, the entire powers of government over a country of any considerable extent, or to exercise, in person, any one entire branch of that power, where its objects are numerous, and call for the frequent and instant application of it. Nor is it the policy of a republican go-





vernment, to weaken the responsibility of those, who *actually* exercise its powers, by interposing between them and the government, and as their principals, great state officers, as depositaries of its powers, or entire branches of them, who, by their will and discretion, prescribe and regulate the subdivisions of power, and control the agent. Such subdivisions should be made by the people themselves; and the officers, clothed with such fractions of State power, should come directly from, and be directly responsible to the people themselves, and not to one great state officer. Hence, in Maryland, not only are there numerous subdivisions of State power with reference to its distinct objects, but nearly every branch of it is broken up into similar county or district powers corresponding, except as to the territory over which they are to be exercised.

The only subdivisions which are connected with the civil and political history of the state, are those of

1. Shores.

2. Counties.

3. Districts.

The subdivision of counties into hundreds, in this State, is coeval with the existence of counties; and, indeed, during the first year of the colony, each hundred of the county had its distinct representation in the legislature, and in this respect bore the same relation to its county, which the counties now do to the State. But they are now of little, if any, utility; and the very traces of their limits have been obliterated, and are unknown in many of the counties. They have, in fact, in a great degree, ceased to be subdivisions, because the subdivisions of power, for which they were created, are changed, although there are yet a few cases arising under our old statutes, in which it is necessary to recur to them. In most of their purposes, they have, however, been superseded by the election districts, which have taken their place even as to constables, who were so peculiarly the officers of the hundred, but are now appointed for election districts.

### (1) *Of the Shores.*

The subdivision of shores arises from the intersection of the State by the Chesapeake bay, which divides it into eastern and western sections, respectively called, "*the Eastern and Western Shores of the State.*" This natural division of the State has be-





come a *civil division* from adventitious circumstances, which have principally passed away, but have left the division behind them, in many cases to answer no purpose, but to foster the unreasonable jealousies, which, in some measure, gave it birth, and which, in its turn, it sustains, and is likely to perpetuate. As a *civil division*, it has been established by our Constitution upon such a basis, and with such securities for its continuance, that it will probably never cease to exist but with the State; and such has been its tendency, whilst thus sanctioned and sustained, to create a difference in feeling, and a supposed difference in interest, that at present, by the force of law or custom, it enters into every state election. In its origin, it was the creature of convenience. It was introduced for, and doubtless accomplished, useful purposes. The settlements on the two shores were remote from each other. The facilities of intercourse, which we now enjoy, did not then exist; and the location of state offices, on both shores, was made *for the accommodation of the settler*. Yet, (as the reader will hereafter perceive, in examining the history of the state offices as they existed before the revolution,) this division was extended to but few of them. It was not then known to the law, in the constitution of either branch of the legislature. It did not then exist in relation to the land office, or the institutions connected with it, as it does at this day. It was not then respected by the proprietary, in the selection of his governor and council, as it is by imperative custom at this day. Then it was not introduced, or used, as it has been since the adoption of our present constitution, as a *mere preserver of the balance of political power between the two shores*; and herein is the distinction between this civil division as it now exists, and as it existed before the revolution. Then its purposes were legitimate; and its object, as to the offices to which it applied, was to subserve the convenience of the citizen. Now it is a mere check to preserve the balance of power between the two shores, which, as to most of the offices, is not only not required by a regard to the convenience of persons transacting business through them, but is even inconsistent with it, and is a mere element of strife, which tends to merge our regard for our common state and its interests in *mere shore jealousies*. Yet by custom in many cases, and by law in others, the division has become very prominent, and it is therefore neces-



sary to notice the cases to which it is so extended. Where it exists *by custom against or without law*, it can scarcely be regarded as an authoritative distinction; yet that custom has become so inveterate, that the necessary precautions for its preservation are always observed; as, for instance, in elections by the legislature, where some order preliminary to the election, is usually adopted, for the purpose of prescribing and regulating such elections in conformity to the custom. This custom is also worthy of consideration, as a striking illustration of the tendency of our constitutional and other institutions as to the two shores, and of the spirit which they are calculated to engender. By a *custom* which is now never departed from, except in sudden revolutions of political power in the State, the Governor, who is elected annually, and is eligible only for three successive years, is taken alternately from the two shores. By a *similar custom*, his council, which consists of five persons, is always composed of two residents of the Eastern, and three residents of the Western Shore. This is followed up even in the election of officers of the House of Delegates. Some regard is paid to it in the choice of speaker, although it has less influence upon this election, than upon that of any other officer of the House. If the clerk of the House be taken from one shore, it is the practice to take the reading clerk from the other; and in the election even of committee clerks, it is a practice equally as inveterate to elect two from the eastern, and three from the Western Shore.

Such being the *customary* respect paid to this subdivision, we are now to consider the purposes for which it is established as a civil division by law.

In the election of *Senators to represent us in the Senate of the United States*, our state laws require that one of the senators shall always be an inhabitant of the Eastern, and the other of the Western Shore. (1) This is a restriction imposed by state laws, which it is proper to respect, and which will probably always be respected. Yet state laws cannot attach this to the office of senator of the United States, as a necessary qualification. The Constitution of the United States requires only that the senator should be a resident of the state for which he is chosen; and it gives the senate

(1) Act of 1809, chap. 22, November session.





the exclusive power of judging of the qualifications of its members. The Constitution of the United States can alone prescribe *imperative* qualifications; and the only power delegated to the states, is that of prescribing the time, place and manner of holding the election under and with respect to the qualifications so prescribed; and even as to the *time and manner* of holding them, there is a power reserved to congress under that constitution to prescribe them by law, and so to alter or repeal all inconsistent state regulations. (2) The state governments have no power to superinduce any new qualification for this office; and the restriction of the act of 1809, being a self imposed restriction, attaching a qualification not known to the Constitution of the United States, although entitled to all respect, is not so authoritative that the neglect to observe it would invalidate the election.

In the election of *State Senators*, our constitution requires, that of the fifteen members which compose it, nine shall be chosen from the Western, and six from the Eastern Shore. (3)

In the organization of the *Court of Appeals*, the two shores also constitute two judicial districts; for although there be but one Court of Appeals, yet that court is required to hold distinct sessions on each shore, for the exercise of the appellate jurisdiction of that shore, and there is a distinct office and clerk appurtenant to this court on each shore. (4)

So, also, there is a distinct organization of the *land office* for each shore, carrying with it in its train the offices of judge, register of the land office, and examiner. (5)

There is also a *treasury office* for each shore, established by the constitution, and a distinct treasurer for each. (6)

As we shall have occasion, hereafter, to enquire into the origin and constitution of these several offices, it is sufficient for our present purposes to notice their existence, as predicated upon this subdivision. The brief view which has been given of the

(2) Constitution of the United States, Article 1st, section 4th.

(3) Constitution of Maryland, Articles 15 and 16.

(4) Constitution of Maryland, as amended by the Act of 1804, chap. 55, and carried into effect by the Acts of 1815, chap. 215, and 1816, chap. 151.

(5) Constitution of Maryland, Article 51, and Acts of November, 1781, chap. 20, section 3d, and 1795, chap. 61 sections 3d, and 5th.

(6) Constitution of Maryland, Art. 13th.





extent to which this natural division of the State exists as a civil division, will at once show the truth of the remark: "*That there is scarcely any State office, into the appointments to which it does not enter, and that at present our State is divided into two distinct sections, which are regarded as having as distinct portions of the political power of the State, as if they were distinct members of a mere confederate government.*" These institutions thus impart to our state the character of a confederacy of the two shores; and the natural result of their distinct organization as *quasi-confederates*, is uncontrollable jealousy between them, in every question into which a supposed difference of interest may enter. The very fact that they are thus separated, begets a belief of the existence of distinct interests in many cases where they do not exist, as has been seen in many questions agitated in this State. Its tendency has been to induce us, each to regard the other, as strangers and aliens in our own land, and to cripple our state energies on every occasion which calls for their full exertion. Our citizens see, feel, and deplore this, yet they continue to give fresh vigour to this feeling, by extending it to every state operation. It has become manifest to all, that this division of state offices exists in many cases, where it is not only entirely unnecessary, but even prejudicial. This distinction may be worthy of preservation in the distribution of *clementary political power*, as in the organization of the legislature, and in the constitution of the supreme executive power; yet it cannot be denied, that as to many of the minor offices, it is a mere sacrifice of convenience and public economy at the shrine of shore jealousy. In passing from the consideration of this civil division, it must be remarked, that, wherever it is established by the constitution, every change of it, or of any part of the constitution which relates particularly to the *Eastern Shore*, must be made not only as other constitutional amendments, by a bill passed at one session of the General Assembly, and, after publication to the people, confirmed at the next session of the Assembly after a new election; but such change must also be concurred in at both sessions, *by two thirds of all the members of each house of Assembly.* (7)

(7) Constitution of Maryland, Article 59.



(2) *Of the Counties.*

The subdivisions called "Counties," as well as those of hundreds, were instituted in England about the commencement of the ninth century, by the illustrious king Alfred: and with their train of correspondent officers, such as sheriffs, coroners, justices, and constables, were borrowed by the colonists of Maryland from the institutions of the mother country. That of hundreds has in a great degree ceased to exist, but the counties still remain as the principal *civil divisions* of the State; for even where divisions of a more extensive kind have been formed, they have been generally formed by the combination of counties. It is not, however sufficient to refer to these, as existing civil divisions. Many of them were erected by *orders in council*, to which we must refer, not only for their origin and original extent, but in some instances even for their present limits. Of these orders, some are lost, and others are locked up in unpublished records. And even where they are determined by *acts of Assembly*, these are scattered over such a mass of legislation, that it is difficult to collect them; and the sources whence they are to be collected are accessible to but few. Hence there are few subjects, about which the people of this State are so ignorant, as in reference to the manner in which, and the time at which the counties of the State were erected, their original extent, and their gradual contraction or extension to their present limits. A striking illustration of this was furnished in the recent contests before the legislature, about the true location of the boundary line between Anne Arundel and Calvert counties. These counties were erected between the years 1650 and 1660, and the definition of their common boundary had been suffered to rest upon the vague and indefinite expressions of orders in council and acts of that period, until, at length, in 1822-23, when it was taken up for final adjustment, it had become unintelligible in its descriptive terms; so that the legislature found it necessary to establish a new line, as a line of compromise, running between the lines severally contended for by these counties. We will, therefore, briefly notice the *origin and limits* of the several counties, as serving not only to prescribe the extent of mere county powers, but also, in some degree, to illustrate the progress of the settlements of the State.





The State of Maryland is divided into nineteen counties, of which eight are situated on the Eastern, and eleven on the Western Shore. Those on the Eastern Shore are Cecil, Kent, Queen Anne's, Talbot, Caroline, Dorchester, Somerset and Worcester; and those on the Western, are Allegany, Washington, Frederick, Harford, Baltimore, Montgomery, Anne Arundel, Prince George's, Calvert, Charles and St. Mary's, of which we will speak in the order of their origin.

The first settlements within the State, which were made under the authority of the proprietary, were at and near St. Mary's, and were made in 1633-34. At that time, as has been remarked in the preceding chapter, there was a small settlement on Kent Island, which had been there planted by Clayborne, and which, after Clayborne's rebellion, was reduced to submission, and became the nucleus of the Eastern Shore settlements. This settlement, and that of St. Mary's, were the only distinct and recognized settlements of the province, for some years after its colonization commenced. At that period, St. Mary's was the name of a settlement, rather than of a county; and as the settlements around it progressed, they were erected into hundreds, and became constituent parts of the county or settlement. At length, in 1650, a new county was erected in the northern part of the Western Shore; and it seems, also, that by *an order in council* of that year, a part of the territory on the south side of the Patuxent river, was erected into a county called Charles. (8) In 1654, this last mentioned order in council, was repealed by another order in council of July 3d, 1654, and a new county erected, under the name of Calvert, which was bounded on the north by a creek, on the west side of Chesapeake bay, called Herring bay, and on the south side by Pinehill river or creek to the head, and through the woods to the head of Patuxent river, which constitute, *says that order*, the northern bounds of St. Mary's. (9) In the ensuing October, and after the government of the province had been taken out of the hands of Stone, the proprietary's governor, and the rule of the province had been assumed by Cromwell's commissioners, an ordinance was passed

(8) Acts of 1650, chap. 8, and Land Records, Liber 1, folio 615.

(9) Order in Council of July 3d, 1654; in Land Records, Liber 1, folio 615.





by the authority of these commissioners, which declared that "all the lands extending from Marsh's creek down the bay, including all the lands on the south side of the bay and cliffs, with the north and south sides of Patuxent river, shall constitute a county, to be called (as it is, says the order) Patuxent county." (10) In 1658, upon the restoration of the government to the proprietary, all the acts and orders of Cromwell's commissioners were annulled at one fell swoop, and with them, of course, this ordinance of 5th October, 1654; by which repeal, the boundaries prescribed by the order in council of July 3d, 1654, appear to have been restored. (11) In the year of this restoration, a new county was erected, under the name of "Charles," which was separated from St. Mary's by the Wicomico river, and extended thence up the Potomac river to the uttermost settlements, and thence to the head of Wicomico. (12) St. Mary's having always been the extreme southern county of the Western Shore, it was therefore always bounded on the east by the bay, and on the south by the bay and the Potomac. Thus the boundaries of St. Mary's continued to be defined, until 1695, when they were definitively and finally settled by the act of May session, 1695, chap. 13, confirmed and made perpetual by the act of 1704, chap. 92, which declares "*that St. Mary's county shall begin at Point Look Out, and extend up Potowmac river to the lower side of Bird's creek, and so over by a straight line drawn from the head of the main branch of the said Bird's creek, to the head of Indian creek in Patuxent river, including all that land lying between Patuxent and Potomac rivers, from the lower part of the said two creeks and branches of Bird's and Indian's creek by the line aforesaid, and by Point Look Out.*"

Population of St. Mary's in 1791, 15,544—in 1801, 13,669—in 1811, 12,794—in 1821, 12,974.

(10) Ordinance of 5th October, 1654, in Land Records, Liber 2, folio 423.

(11) See this general repealing order of 1658, in Court of Appeals records, Liber S. folio 373, which was in direct conflict with the treaty, by which the province was surrendered by Cromwell's commissioners to Fendall, the proprietary's governor.

(12) Order of 10th May, 1658, in Liber S. Court of Appeals Records and Council Chamber Records, Liber H II, page 19.



KENT COUNTY, on the Eastern Shore, seems to have borne the same relation to the counties of that shore, which St. Mary's did to those of the Western. It was the nucleus around which the other counties have been formed. We have seen that the settlements made by Clayborne, on Kent Island, were anterior to those of the proprietary; (13) and when these settlements had passed under the dominion of the proprietary, Kent and St. Mary's remained the only civil divisions of the province, until 1650, the Kent settlement being *a commandate*, and placed under the rule of an officer called *the commander of the Isle of Kent*. Of the nature and character of this office, and the character thereby imparted to the settlement subject to it, we shall have occasion to speak hereafter; and, for the present, it will be sufficient to remark, that it was a civil division analagous to that of a county. About the year 1650, and between that and the year 1660, several new counties were erected on the Western Shore; but on the Eastern Shore, the first distinct civil division, after that of Kent Island, was Talbot, which was erected about the year 1661, out of the territory south of Kent Island. After this were created, Somerset in 1666, Cecil in 1674, Dorchester in or about 1669, Queen Anne's in 1706, Worcester in 1742, and Caroline in 1773. Settlements were made on the southern part of the Eastern Shore as early as 1661, under Elzey and others, of which we have already treated; (14) but they were, in the first instance, regarded as settlements or colonies, subject to the jurisdiction of the province at large, and not as distinct civil divisions, until Somerset county was erected. The subdivision called the Isle of Kent, being in its origin, as was St. Mary's, *the name of an undefined settlement*, the county of Kent received its definite limits from the erection of other counties around it. I have not discovered the order, or act, by which Talbot was erected out of the territory lying south of Kent Island settlement; but the legislative records first show its existence in 1661. On the north, Cecil county was erected in 1674; and the proclamation erecting it, extended it from the mouth of the Susquehanna river, and thence down the eastern side of the bay to Swan Point, thence to

(13) See Supra 6.

(14) Supra 19.





Hell Point, and thence up Chester river to the head thereof. (15) In 1695, Kent Island was attached to Talbot county; and at length in 1706, when Queen Anne's was erected, Kent received precise and definite limits. (16) The bounds assigned were, "*on the north Sassafra river from the bay to the south end of the Long Horse bridge, lying over the head of the said river, and thence a straight line, drawn east and by south, to the exterior bounds of the province; on the east by the lines of the province, until they intersect the southern line; on the south, a line beginning on the bay with Chester river, and running with the same to a branch called Sewell's branch, and with that to its head, and thence by a due east line to the eastern bounds of the province;—on the west, the bay.*" Its eastern limits being dependent upon the eastern limits of the province, were of course not adjusted until the close of the controversy between the proprietaries of Maryland and Pennsylvania, of which we have already so fully treated. The other lines are the same; and the adjustment with the Penns having thrown the peninsular line which divides Maryland from Delaware to the centre of the peninsula, so as to cross the heads both of Sassafra and Chester, it has given to this county a natural boundary on all sides except the east, its bounds now being the Sassafra river on the north, the bay on the east, Chester river on the south, and the eastern line of the province from Chester to Sassafra on the east.

Population of Kent in 1791, 12,836,—in 1801, 11,774,—in 1811, 11,450,—in 1821, 11,453.

ANNE ARUNDEL COUNTY was erected in 1650. In its origin, it was a settlement called Providence; and therefore the act of 1650, chap. 8th, erecting it, simply enacts, "that all that part of the province over against the Isle of Kent, called Providence by the inhabitants thereof, shall constitute a county to be called Anne Arundel." In 1654, Calvert county was created out of the territory south of Anne Arundel; and by an ordinance of Cromwell's commissioners, the name of Providence was substituted for that of Anne Arundel, whilst from that period until 1658, and whilst the province was under the government of the Protector's commissioners, Calvert bore the name of Patuxent. Upon the resto-

(15) Council Chamber Records, Liber R R. 30.

(16) Acts of 1695, chap. 13, and 1706, chap. 3.





ration of the proprietary's government, and the general repeal of the ordinances passed during the usurpation, the original names of both were restored. By the order in council of July 3d, 1654, first erecting Calvert county, the bounds between it and Anne Arundel, were declared to be "*a creek on the western side of the bay, called Herring creek, and thence through the woods to the head of Patuxent river.*" The subsequent ordinance of Cromwell's commissioners passed in October, 1654, declared, that Patuxent (which name Calvert had then received) should be "*a county extending from the south side of Marsh's or Oyster creek, including all the lands on the south side of the bay, and the cliffs, with the north and south side of the Patuxent river, and shall be called, as it is, Patuxent county.*" At the same time, an ordinance was also passed, declaring that Anne Arundel county shall be called Providence, and that its bounds shall be Herring creek, including all the plantations and lands with the bounds of Patuxent county, i. e. to a creek called Marsh's or Oyster creek. (17) Upon the restoration of the proprietary government, an order in council was immediately passed, (which, by the bye, appears to be incompatible with the treaty under which the government was surrendered,) declaring void all the acts and orders passed during the defection from the proprietary government, and directing, in *true randal spirit*, that they be razed and torn from the records. (18) These ordinances, thus changing the name and the bounds of the two counties, appear to have fallen within the range of this sweeping order, which therefore restored the original name and bounds. Thus the question of the boundary rested (except as affected by the proclamation of 6th June, 1674, alluded to in note (20) *infra*) until 1777, when it appears to have been held, by the House of Delegates, in deciding upon the eligibility of a Mr. Mackall, that the creek, at present called Fishing creek, was the reputed and long received boundary between the two counties. (19) It was again agitated in 1809; and finally in

(17) These several orders and ordinances may be seen in Land Records, Liber 1, folio 615, and Liber 2, folios 423 and 428.

(18) Court of Appeals Records, Liber S. 378.

(19) At October session, 1777, an act of Assembly was passed, appointing commissioners to ascertain and establish the divisional line between these counties, who were to report their proceedings to the next General Assembly



1822, an act was passed, appointing commissioners to ascertain and establish the divisional line. In 1823, an act for its definitive ascertainment was passed, which directed that the commissioners, appointed by the act of 1822, should locate it according to given metes designated on the plot returned by them, beginning the line at the mouth of a creek called "Muddy or Red Lion's creek," the same being a line of compromise between the conflicting claims of the two counties. And in 1824, another act was passed, defining this creek to be one known by the name of *South or Middle creek*. (20) Thus terminated a controversy, the full detail of which is not necessary for our present purposes. The claim of Calvert embraced an extent of territory more material to her by its gain, with her present contracted limits, than the loss of it would have been injurious to the extensive county of Anne Arundel. It appears from the report of a committee of the Legislature in 1824, that her claim did not extend to Herring creek, the boundary assigned by the order of July, 1654; but that Marsh's creek being the conceded boundary, the dispute was as to the true location of that creek; and that Calvert, on the one hand, contended that it was a creek falling into Herring creek near its mouth, and extending westwardly with that creek to one of the heads of Lyon's creek, and thence with Lyon's creek to the Patuxent; whilst, on the other hand, it was held by Anne Arundel that it was the creek now called Fishing creek. Whatever may be the fact, as to the long continued and universal admission and reception of Marsh's creek as the true boundary, and whatever effect such reception of it might have upon the question of right, there appears to have been a mistake in the supposition that the order of July, 1654, was wholly inoperative. The act of Assembly, alluded to in that report as having repeal-

for its ratification: but no adjustment of the boundaries was made under it. See act of October, 1777, chap. 7th.

(20) Acts of 1822, chap. 109; 1823, chap. 183, and 1824, chap. 193. In the progress of this controversy, no notice appears to have been taken of the proclamation of 6th June, 1674, which declares: That the north side of Patuxent river, beginning at north side of Lyon's creek, shall be added to Anne Arundel county: The effect of this was to make Lyon's creek the limit of the southern extent of Anne Arundel county. See this proclamation in Council Chamber Liber Records, R R, Council Proceedings, 30.





ed this order, was the ordinance of October, 1654, above alluded to, which was itself repealed in 1658. However, the question is now at rest; and the southern boundary of Anne Arundel, separating it from Calvert, is the line above described, running to the Patuxent. The Patuxent, its original boundary, still separates it on the west from Prince George's and Montgomery counties. On the north, its bounds were not definitive until the creation of Baltimore county in 1659, out of the territory lying north of the Patapsco river, which was the original boundary between it and that county. By reference to the remarks upon the latter county, it will be seen, that, in 1698, a part of the territory lying south of the Patapsco was taken from Anne Arundel, and attached to it: but that, in 1725, the original boundary of the Patapsco was restored, and continues to this day.

Population of Anne Arundel (21) in 1791, 22,598—in 1801, 22,623—in 1811, 26,668—and in 1821, 27,165.

CALVERT COUNTY was erected in July, 1654. By reference to the remarks upon Anne Arundel county, it will be seen, that, in October, 1654, and after the government of the province had passed into the hands of Cromwell's commissioners, it received the name of Patuxent, and continued to bear that name until the restoration of the proprietary government in 1658, when the original name of Calvert was restored by the general repeal of the acts and orders passed during the defection, and has continued until this day. The state of the boundaries between it and Anne Arundel, from the period at which Calvert was created until the final adjustment in 1824, has also been fully exhibited under that head. On the south, it was originally separated from St. Mary's by Pinehill river or creek, to its head, and a line running thence to the head of Patuxent river: which constitute, says the order of July 3d, 1654, the northern bounds of St. Mary's. The ordinance of the following October, above alluded to, directed that it should extend south "*from Marsh's creek down the bay, including all the lands on the south side of the bay and the cliffs, with the north and south side of Patuxent river.*" The effect of the general repealing order of 1658, appears to have been, the

(21) The statement of the population of the several counties in 1801, is taken from the corrected census reported by Marshal Etting on 21st December, 1801, which, as to this county and some others, varies from the original return.





restoration of the bounds assigned by the order of July, 1654; but both these, and its western boundaries, were finally adjusted by the existing act of 1695, chap. 13, which separate it from St. Mary's, Charles and Prince George's, by the Patuxent from its source, until it meets the boundary line between it and Anne Arundel.

Population of Calvert in 1791, 8,652—in 1801, 8,297—in 1811, 8,005—in 1821, 8,073.

CHARLES COUNTY was one of the first fruits of loyalty to the proprietary; upon the restoration of his government in 1658. A county of that name had been established in 1650, by an order in council, which was repealed in 1654, and the county of Calvert erected in its stead. (22) But on the surrender of the province to Fendall, the proprietary's governor, one of his first acts was the creation of this county, the bounds of which, as defined by the commission appointing officers for it, were "*the river Wicomico to its head; and from the mouth of that river, up the Potomac as high as the settlements extend, and thence to the head of Wicomico.*" (23) Upon this general and vague description, its boundaries were suffered to rest until 1695, when Prince George's county was formed out of the territory lying north of the Mattawoman creek, and the limits of Charles rendered definite by the act of 1695, chap. 13, confirmed and made perpetual by the act of 1704, chap. 92. By this act, it is separated from St. Mary's on the east, "*by the line already described as the western boundary of St. Mary's; and on the north from Prince George's, by the Mattawoman creek, and a straight line drawn thence to the head of Swanson's creek, and with that creek to the Patuxent.*" No change of this adjustment has been made, except in the boundary between it and Prince George's, which is slightly varied to the west by an artificial line running from the Mattawoman to a given point on the Potomac, nearly opposite to Mount Vernon. This line was adopted as the boundary between the Potomac and the point at which it leaves the Mattawoman, in lieu of the Mattawoman by the act of 1748, chap.

(22) Land Records, Liber 1, folio 615.

(23) Liber S, Court of Appeals Records, 10th May, 1658, and Council Chamber Records, Liber H H, 19.



14. (21) On the south and east, Charles county has always been bounded by the Potomac.

Population of Charles in 1791, 20,613—in 1801, 19,172—in 1811, 20,245—in 1821, 16,500.

BALTIMORE COUNTY was formed out of the territory north of Anne Arundel, in or about the year 1659. Our researches have not enabled us to discover the order in council by which it was erected; but the legislative records shew, that it did not exist before 1659; and the first description which we have of its bounds, is contained in the proclamation of 6th June, 1674, which declares that the southern bounds of Baltimore county, shall be, "*the south side of Patapsco river, and from the highest plantations on that side of the river, due south two miles into the woods.*" In 1698, an act was passed, adopting a boundary line which had been located between Baltimore and Anne Arundel counties, by commissioners appointed under an ordinance of Assembly passed in 1696. This line, which is particularly described in this act of 1698, and which began upon the bay about one mile and a quarter to the south of Bodkin creek, attached to Baltimore county a considerable tract of country lying south of the Patapsco; but in 1725, this act of 1698, so far as it attaches to Baltimore county any part of the territory south of the Patapsco, was wholly repealed by the act of March, 1725, chap. 1st. (25) This last men-

(24) This act of 1748, chap. 14, enacts: that after 10th December, 1748, the "land lying in Prince George's county, and contained within the following bounds, to wit: by a line drawn from Mattawoman run, in the road commonly called the Rolling road, that leads from the late dwelling plantation of Mr. Edward Neale, through the lower part of Mr. Peter Dent's dwelling plantation, until it strikes Potomac river, at or near the bounded tree of a tract of land whereon John Beal, junior, now lives, and thence with the river to the mouth of Mattawoman, shall be a part of Charles county."

(25) The following is the description of the bounds as fixed by this act of 1698, chap. 13, and as they remained from that period until 1725, "beginning at three marked trees, viz. a white oak, a red oak, and a chesnut tree, standing about a mile and a quarter to the southward of Bodkin creek on the west side of Chesapeake bay, and near a marsh and a pond; thence west until they cross the mountains of the mouth of Magothy river, to Richard Beard's mill; thence continuing westward with said road to William Hawkins' path to two marked trees; thence along said road near to John Locket's road to two marked trees; thence leaving said road by a line drawn west to William Slade's path to two marked trees; thence continuing west between the





the limits of the province, and was bounded on the east by the bay and the Susquehanna; and such continued to be its extent, until the establishment of Harford county by the act of 1773, chap. 6th, which separates it from Baltimore county by a line beginning at the mouth of Little Gunpowder river, and running with that river to its fountain head, and thence north to the Pennsylvania line.

Population of Baltimore county (exclusive of Baltimore town or city) in 1791, 25,434—in 1801, 32,716—in 1811, 29,255—in 1821, 33,465.

TALBOT COUNTY was formed in 1660-61. The order by which it was created, has not been found; but the Assembly proceedings first show its existence in this year. The existing records of the province have not discovered to us what were its exact limits anterior to the year 1706. In that year, they were definitely settled by the existing act of 1706, chap. 3d, which enacts "that the bounds of Talbot county shall contain Sharp's Island, Choptank Island, and all the land on the north side of the Great Choptank river; and extend itself up the said river to Tuckahoe Bridge; and from thence with a straight line to the mill, commonly called and known by the name of Swetnam's mill, and thence down the south side of Wye river to its mouth, and thence down the bay to the place of beginning, including Poplar Island and Bruff's Island.

Population of Talbot in 1791, 13,084—in 1801, 13,436—in 1811, 14,230—in 1821, 14,389.

SOMERSET COUNTY was erected by the governor's order of 22d August, 1666, which assigned to it, as its limits, on the south, the southern boundary of the State on the eastern shore; on the west, the bay: on the north, the Nanticoke river; and on the east, the ocean. This county was formed to embrace the

called John Digge's road, about a mile above the place called the Burnt House woods; and running thence up the said road to a bounded white oak standing on the east side thereof, at the head of a draught of Sam's creek; thence N 55° E to a Spanish Oak standing on a ridge near William Roberts's, and opposite to the head of a branch called the Beaver Dam; thence N 20° E to the temporary line between the provinces of Maryland and Pennsylvania, being near the head of a draught called Conawago, at a rocky hill called Rattle Snake Hill."





thriving settlements in that section of the State, which were planted under the direction of Elzey, Revell and others, as early as 1661, and of which we have briefly traced the origin in the preceding chapter. Its boundaries remained as established by this order of 1666, until the passage of the Act of 1742, chap. 19, creating Worcester county; by which Act, and the adjustment of the Delaware line under the agreement of 1760, between Baltimore and the Penns, its original limits have been considerably contracted and are now determined. As adjusted by these, its bounds begin at Watkin's point, and run thence up Pocomoke bay to the mouth of Pocomoke river, and with that river to the mouth of Dividing creek; thence up the western side of said creek to Denstone's bridge: thence with artificial lines, which are particularly described in the Act, until they intersect the Delaware lines, as established under the agreement of 1760, and with those lines until they intersect the Nanticoke river; thence with the Nanticoke to its mouth; and thence down the bay to Watkin's point, including all the Islands which had been previously regarded as attached to Somerset. (27)

Population of Somerset in 1791, 15,610—in 1801, 17,348—in 1811, 17,195—in 1821, 19,579.

DORCHESTER COUNTY, which was formed about the year 1669, appears to have included originally all that part of the province lying between Talbot and Somerset. The proclamation, or order in council, by which it was erected, has not been discovered

(27) The description of the bounds of Somerset county by this Act of 1742, chap. 19, is as follows: "beginning at Watkin's point, and thence running up Pocomoke bay to the mouth of Pocomoke river, and up and with said river to the mouth of Dividing creek; thence up the westernmost side of the said creek to the bridges called 'Denstone's bridges;' thence west to the main road called 'Parahawkin road;' thence up and with the said road to John Caldwell senior's saw mill; thence up and with the said road, over Cox's branch to Broad creek bridge, and down the said branch and creek into Nanticoke river; thence down the said river with Dorchester county to the mouth thereof; and thence, including all the Islands formerly deemed to be in Somerset county," to Watkin's point; and all the remaining part of what is now reputed to be within the county of Somerset to the extent of the province, to be, and be called Worcester county." No change has been made in this description of the bounds, except by the adjustment of the Maryland and Delaware, under the agreement of 1760, between the Penns and Lord Baltimore, for which see *Antea*, chap. 1st. page.



in the course of our researches. In 1706, when Queen Anne's county was created, the northern limits of Dorchester were determined by the bounds assigned to Queen Anne's and Talbot, by the Act of 1706, chap. 3d. The effect of this Act was to give to the former, as its northern boundary, the Choptank river from its mouth to Tuckahoe creek, thence up Tuckahoe creek to the mouth of the Whitemarsh branch, and thence a north east line to the extent of the province. Caroline county being formed in 1773, by the Act of 1773, chap. 10, out of parts of Dorchester and Queen Anne's counties, Dorchester then received its existing northern limits, which begin at the mouth of the Choptank, and run thence up the Choptank to the Tuckahoe to Hunting creek, and with that creek, by artificial lines particularly described in the Act, to the Delaware line. On the east, Dorchester is bounded by the Delaware line, as adjusted under the proprietary's agreement of 1760. (28) On the south, it has always been separated from Somerset by the Nanticoke; and on the west, it has always been bounded by the bay.

Population of Dorchester in 1791, 15,875—in 1801, 16,346—in 1811, 18,108—and in 1821, 17,759.

CECIL COUNTY was created in 1674, by the proclamation of governor Charles Calvert, which described its bounds to be "from the mouth of the Susquehanna river down the eastern side of the bay to Swan point; thence to Hell point, and so up Chester river to the head thereof." These bounds were slightly varied by a proclamation issued a few days afterwards, and so remained until they were finally ascertained by the Act of 1706, chap. 3d, which enacts "that Cecil County shall contain all the lands on the north side of Sassafras river and Kent county, and shall be bounded on the east and north by the bounds of the province, on the west by the Susquehanna and the bay, and on the south by the Sassafras river and Kent county."

Population of Cecil in 1791, 13,625—in 1801, 9,018—in 1811, 13,066—and in 1821, 16,048

PRINCE GEORGE'S COUNTY, as described by the Act creating it, viz. the Act of 1695, chap. 13, included all the territory lying

(28) For a view of the adjustment of the boundaries of this county, by the bounds assigned to Talbot, Queen Anne's and Caroline, see the descriptions of the bounds of those counties.





north of the Mattawoman and Swanson's creek, and a straight line connecting their heads; and between the rivers Patuxent and Potomac. On the south, no change has been made in the line dividing it from Charles, except that effected by the act of 1748, chap. 14, which has already been noticed in our remarks upon Charles county. In 1748, this county received its first definite western limits by the creation of Frederick county, from which it was separated by a straight line, beginning at the lower side of the mouth of Rock Creek, and running thence with Hyatt's plantation to the Patuxent river. Since that period, no change has been made in its bounds, except by the interposition of the District of Columbia, which has given to it, as its present southern and western boundaries, the Potomac river until it meets the lines of the District, then with those lines lying in Maryland until they intersect the former line from Rock creek, and with that line to the Patuxent. On the north and west, it has always been separated from Anne Arundel and Calvert by the Patuxent river.

Population of Prince George's in 1791, 21,344—in 1801, 21,185—in 1811, 20,589—and in 1821, 20,216.

QUEEN ANNE'S COUNTY was created by the act of 1706, chap. 3d, and its bounds remain as established by that act, the act of 1773, chap. 10, and the adjustment of the Maryland and Delaware lines. On the north it is separated from Kent county by the Chester river. On the east it is bounded by the Delaware and Maryland line. On the south, it is separated from Talbot and Caroline counties by the Wye river, and an artificial line running thence to the Tuckahoe creek, already adverted to as the northern line of Talbot, and thence with the northern line of Caroline county to the eastern limits of the State. (29)

(29) The bounds of Queen Anne's, as described by the act of 1706, chap. 3d, are, "that after the 1st May, 1707, the Island called Kent Island, and all the land on the south side of Chester river to a branch called Sewell's Branch, and with the said branch to the head thereof, and from thence with an east line to the extent of the province, and bounded on the south with Talbot county to Tuckahoe bridge, and from thence with Tuckahoe creek and Chop-tank river to the mouth of a branch falling into the said river, called the Whitemarsh Branch, and thence with a N E line to the extent of the province, and bounded on the east by the extreme bounds of the province. The





Population of Queen Anne's in 1791, 15,463—in 1801, 14,851—in 1811, 16,648—and in 1821, 14,952.

WORCESTER COUNTY, as it now exists, was formed in 1742, by the act of 1742, chap. 19. A county of that name was erected in 1672, which began at the southernmost bounds of Rehoboth bay, and ran thence north up the seaboard to the South Cape of Delaware bay, and thence to Whorekill creek and up the bay to 40th degree of north latitude; but this, it will be perceived, included merely the territory, claimed by Penn and his successors, and ultimately ceded to them by the agreements of 1732 and 1760, which are given in detail in the preceding chapter. The bounds of this county remain as determined by the act of 1742; and they are, on the west, the line between it and Somerset already described, and on the north, east and south, the lines of the State.

Population of Worcester in 1791, 11,640—in 1801, 15,570—in 1811, 16,971—and in 1821, 17,421.

FREDERICK COUNTY was created in 1748, by the act of 1748, chap. 15, and originally embraced the whole of the province lying west of the western lines of Prince George's, Anne Arundel and Baltimore counties. By the resolves of the Convention which formed our present State Constitution, adopted on the 6th of September, 1776, two new counties were formed out of portions of it, viz: Montgomery on the south, and Washington on the west. From the former of these, it is divided by a straight line running from the mouth of the Monocacy river to Parr's spring. At this spring, the lines of Frederick meet the lines of Baltimore county, and run thence to the Pennsylvania line, with the western lines of the latter as adjusted by the act of 1750, chap. 13. (30) The bounds between it and Washington, as defined by these resolves, consist of a line beginning at the point at which the Pennsylvania line crosses the South mountain, and running thence along the summit of that mountain to the Potomac.

change in these produced by the creation of Caroline county, will appear from a description of the bounds of that county; and the lines of Queen Anne's remain unaltered, except as affected by the creation of this county, and the adjustment of the Delaware under the agreement of 1760, for which see chapter 1st.

(30) For the bounds between it and Baltimore county, as finally settled by the act of 1750, chap. 13, see *Supra* note (26) to this chapter.



Population of Frederick in 1791, 30,791—in 1801, 31,523—in 1811, 34,437—and in 1821, 40,459.

HARFORD COUNTY was created in 1773, by the act of 1773, chap. 6th, which enacts "that its bounds shall begin at the mouth of the Little Falls of Gunpowder river, and run thence with said falls to the fountain head; thence north to the line of the province; thence with that line to the Susquehannah river; thence with that river to the Chesapeake bay; thence with the bay, including Spesutia and Pool's Islands, to the mouth of Gunpowder river; and thence up said river to the beginning." No change has been made as to its bounds since its creation.

Population of Harford in 1791, 14,976—in 1801, 17,624—in 1811, 21,258—in 1821, 15,924.

CAROLINE COUNTY was erected in 1773, by the act of 1773, chap. 10. It was formed out of parts of Dorchester and Queen Anne's; and its bounds, as described by that act, "begin at a point on the north side of the mouth of Hunting creek, in Dorchester county, and run thence with that creek to the main road at James Murray's mill; thence with that road, by the White Chapel Parish Church, to the north west Fork bridge; thence with the main road (that leads to Cannon's Ferry) to Nanticoke river; thence with the said river to and with the exterior limits of Dorchester, to the exterior limits of Queen Anne's; thence with the limits of Queen Anne's to intersect the main road that leads from Beaver Dam Causeway to Dover town, in Kent county, upon Delaware; thence with the said road to the Long Marsh; thence with the said Marsh and stream of the branch of Tuckahoe creek to Tuckahoe bridge; thence with the said creek to Great Choptank river, and with said river to the place of beginning." No change has been made in these bounds, except by the act of 1825, chap. 81, which has authorised a slight variation of the line at one point for the convenience of a Mr. Noble, of Dorchester county.

Population of Caroline in 1791, 9,506—in 1801, 9,181—in 1811, 9,453—and in 1821, 10,108.

WASHINGTON COUNTY was created the 6th September, 1776, by the resolves of the Convention that adopted our present State Constitution. On the east, it is separated from Frederick by the line along the summit of the South mountain, already described





as the line of Frederick, (31) On the south, it is bounded by the Potomac; and on the north, by the Maryland and Pennsylvania line, to the west; it originally included the whole province lying west of Frederick; but by the creation of Alleghany county, in 1789, Sideling hill creek became, and still continues to be its western boundary.

Population in 1791, 15,822—in 1801, 18,650—in 1811, 18,730—in 1821, 23,075.

MONTGOMERY COUNTY was created at the same time, and in the same manner, as Washington County; and its bounds remain as then determined. It is separated from Frederick, on the north, by a straight line running from the southern side of the mouth of the Monocasy to Parr's spring. On the north and east, from Anne Arundel by the Patuxent river. On the east and South, from Prince George's by the line already described as the western boundary line of Prince George's.

Population in 1791, 18,003—in 1801, 15,058—in 1811, 17,980—and in 1821, 16,400.

ALLEGANY COUNTY, *the Joseph of the State*, was created in 1789, by the act of 1789, chap. 29, and includes the whole extent of the State lying west of Sideling Hill creek, which divides it from Washington,

Population in 1791, 4,809—in 1801, 6,333—in 1811, 6,909—in 1821, 8,654.

The bounds, which are assigned to the respective counties, define the extent of their general county jurisdiction; but to obviate all difficulties, which might arise where two counties are divided by a navigable stream, the act of 1704, chap. 92, extends the jurisdiction of every county lying on any navigable river which divides it from another county, from its own shore to the channel of such river. So that the channel of any such river is the line between the two counties. It enacts, also, as to vessels riding at anchor in the channel of any such river, that process may be served on board of such vessel by an officer of either county, giving the preference to the first service, but that when the vessel

(31) See the several acts of 1810, chap. 6; 1823, chap. 60, and 1824, chap. 69, relative to the actual running of this line.





is moored by any hold upon the land, she shall be deemed to be in that county to whose shore she is first fastened.

### 3. *Of the Districts.*

The civil divisions of the State, which are called Districts, are established for various purposes; but they all fall under the two genera of *Judicial and Electoral Districts*.

The *Judicial Districts* will be fully considered hereafter, when we come to treat of the courts with whose organization they are connected. It will be sufficient here to remark, that the State is divided into six judicial districts, for each of which, a chief judge and two associate judges are appointed, who constitute "the County Court," for each county within their district, and are invested with plenary civil and criminal jurisdiction. The 1st of these districts consists of St. Mary's, Charles and Prince George's counties. The 2d district of Cecil, Kent, Queen Anne's and Talbot. The 3d, of Anne Arundel, Calvert and Montgomery. The 4th, of Caroline, Dorchester, Somerset and Worcester. The 5th, of Alleghany, Washington, and Frederick. And the 6th, of Baltimore and Harford.

The *Electoral Districts* relate either to the elections under the Constitution of the United States, or those under the state government which are peculiarly called "the state elections." The elections under the former, for which the State is divided into districts, are either *the elections for members of Congress, or for electors of President and Vice-President of the United States*.

Maryland is, and has been for many years, entitled to elect nine representatives in the Congress of the United States; and under the power delegated to the States, by the 4th Section of the 1st Article of the Constitution of the United States, to regulate the time, place and manner of holding the election for these, (subject to the superior power of Congress to alter such regulations or introduce new.) The State is divided, by the existing act of 1805, chap. 97, section 2d, into eight congressional districts. Of these, St. Mary's, Charles and Calvert, constitute the 1st district. Prince George's and Anne Arundel, including the city of Annapolis, the 2d. Montgomery and that part of Frederick lying east of the Monocacy river, the 3d. Alleghany, Washington, and the remainder of Frederick, the 4th. Baltimore



city and county, the 5th. Harford, Cecil and Kent, the 6th. Queen Anne's, Caroline and Talbot, the 7th. And Dorchester, Somerset and Worcester, the 8th. Of these, each district elects one representative, except the 5th, which is entitled to elect two. (32)

The State of Maryland is also entitled to elect eleven electors of President and Vice President, and the exclusive power is given to the legislature of each state to determine the manner of election. In exercise of this power, the State is divided, by the existing act of 1826, chap. 213, into nine electoral districts.

(32) Under the Constitution of the United States, (article 1st. section 2d,) the representatives of the states in the Congress of the United States are distributed amongst the several states, according to the respective numbers of their citizens; and these numbers are estimated by adding to the whole number of free persons within them, (including those bound to service for a term of years, and excluding Indians not taxed,) three fifths of all other persons. This principle of distribution extends also to the direct taxes levied under the authority of the United States; so that in the slave holding states, if their representation is increased by the number of their slaves, so also are their taxes, and in the same proportion. Those who object so strenuously to this partial representation of the slave population in the slave states, always keep out of view this fact, *that their taxation keeps pace with their representation.*

The constitution having thus determined the *apportionment*, it has left to Congress the determination of the *ratio*: or, in other words, *the aggregate number of representatives*, subject only to the restriction, that the number of representatives shall not exceed one for every thirty thousand, and that each state shall *at least* have one representative whether her population comes up to the *ratio* or not. (Constitution art. 1st. section 2d.) To carry into effect its principle of allotment, it directs, also, that an enumeration of the population should be made within three years after the first meeting of Congress, and within every subsequent term of ten years thereafter; and it determined the number of representatives to which each state was entitled, until the first census was taken. Until the first census was taken, *Maryland* was entitled to six representatives; and by the apportionment in 1791, under the first census, she became entitled to eight representatives. Under the apportionment of the act of Congress of January 14th, 1802, predicated upon the census taken under the act of 28th February, 1800, she became entitled to nine representatives; and has continued to retain that number under the successive apportionments of the acts of Congress of 21st December, 1811, and of 7th March, 1822.

Under the first allotment, the State was divided into six districts, (each district choosing one representative,) by the act of 1790, chap. 16, under which





Of these, Calvert, St. Mary's and Charles, compose the 1st district. Prince George's and Montgomery, the 2d. Frederick, Washington and Allegany, the 3d. Baltimore and Annapolis cities, and Anne Arundel, the 4th. Baltimore county, the 5th. Harford and Cecil, the 6th. Kent and Queen Anne's, the 7th. Talbot, Caroline, and the first election district of Dorchester, the 8th. Somerset, Worcester, and the remainder of Dorchester, the 9th. The third and fourth are each entitled to elect two electors; and the remaining districts one for each; and the person elected must be a resident of the district for which he is so elected. (33)

St. Mary's, Charles and Calvert, composed the 1st district:—Kent, Talbot, Cecil and Queen Anne's, the 2d:—Anne Arundel, including Annapolis, and Prince George's, the 3d. Harford and Baltimore town and county, the 4th: Somerset, Dorchester, Worcester and Caroline, the 5th:—Frederick, Washington, Montgomery and Alleghany, the 6th. In 1791, a new division was made to meet the apportionment under the first census, by the act of 1791, ch. 62, (the operation of which was postponed until that apportionment, by the act of 1791, ch. 87,) adapted to the alternatives of her being entitled either to eight or nine representatives. The apportionment giving her but eight, St. Mary's, Charles and Calvert, composed the 1st district:—Prince George's and Anne Arundel, including Annapolis, the 2d: Montgomery and Frederick, adjacent to the Monocacy, the 3d:—Alleghany, Washington and the remainder of Frederick, the 4th:—Baltimore town and county, the 5th:—Harford, Cecil and Kent, the 6th:—Queen Anne's, Caroline and Talbot, the 7th:—Dorchester, Somerset and Worcester, the 8th. The existing act of 1805 adapted the districts to the increase of representatives.

(33) Under the Constitution of the United States, each state is entitled to elect as many electors as the number of her senators and representatives amounts to in the aggregate. This compound basis of distribution was the result of a compromise between the small and the large states. Under it, Maryland was entitled, after the adoption of the Constitution, and before the first apportionment in 1791, to eight electors; under the apportionment in 1791, founded upon the first census, to ten electors; and under the apportionment of 1802, and all which have been made since to eleven electors. (See next note *supra*.)

In the election of these electors, the general ticket system at first prevailed in Maryland. The act of 1790, chap. 16, which was predicated upon the allotment before the first census, permitted all persons, who were qualified to vote for delegates, to vote for eight electors; of whom five were to be residents of the western, and three of the Eastern Shore; and enacted that the five on the Western Shore, and the three on the Eastern Shore, having a plurality of votes, should be declared to be the electors. This system was kept





up by the succeeding Act of 1791, chap. 62, and continued until 1795, when by the Act of 1795, chap. 73, the district system was adopted, and the State divided into ten districts; of which St. Mary's, Charles and Calvert, formed the 1st:—Prince George's and Montgomery, the 2d:—Frederick, the 3d:—Washington and Alleghany, the 4th:—Baltimore town and Anne Arundel including the city of Annapolis, the 5th:—Baltimore county exclusive, and Harford, the 6th:—Cecil and Kent, the 7th:—Queen Anne's and Talbot, the 8th:—Caroline and Dorchester, the 9th:—and Somerset and Worcester, the 10th. Under the gerrymandering division of the Act of 1805, chap. 97, sect. 3d, adapted to the increase under the apportionment of 1802, the State was divided into nine districts; of which the 5th, 6th, 7th, 8th and 9th, were the same as under the existing Act of 1826; and the rest different either in number or the manner in which composed. Under the Act of 1805, the 1st district consisted of St. Mary's, Charles, and first election district of Prince George's—the 2d, of Calvert county; the remainder of Prince George's; and the 3d and 4th election districts, of Montgomery county—the 3d of the remainder of Montgomery, Anne Arundel, including Annapolis, and Baltimore city, and the 4th was the same as the third under the Act of 1826.

Many attempts have been made in Maryland to bring back this election to the general ticket system; but without success. It is the only system which will ever give to the State her proper weight in the election of a President. Under the present system, she seldom tells more than one or two clear votes in favour of any candidate; and her influence upon the election is, therefore, about equal to that of Delaware. The large states, in general, make a better use of their power; and perhaps Maryland would have been more careful in preserving her integral influence, had that influence been greater. Yet small as it may be, in contrast, there may be occasions on which her entire vote, cast one way or the other, will decide the election. The attempts to introduce the general ticket system have generally been made under circumstances which ensure their defeat. No party, on the eve of an election, can be expected to assent to a change, which deprives them of what are considered certain votes in some of the districts; and to stake the whole upon a general election, when they believe that the majority of the State is against them, or even when they fear it. In Maryland, the parties have generally divided its population so equally, that each is trembling for the result until the election closes; and with such apprehensions, it requires strong nerves to stake the whole upon a single cast. They generally calculate, also, on the advantage of having certain districts which excite no apprehensions, require no efforts, and enable them to direct the whole of their attention to the *debateable* districts, upon which the whole power and influence of the two parties is concentrated on the eve of an election. The result of this concentration is obviously the increased exercise of corrupting influences, whose capacity is enlarged by contracting the sphere within which they are to operate. It is therefore believed that not only would the relative influence of the State be increased, but also



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the purity of these elections promoted, by introducing the general ticket system; but such change ought to be made in the absence of party excitement, and not with a view to any particular election.





## CHAPTER III.

### OF THE SOURCES OF MARYLAND LAW.

"*Non ingens solum sed perpetuis humeris sustinendum,*" was the strong and expressive language of Sir Henry Spelman, when he attempted to describe the aspect which the study and profession of the English law wore to him on his first approach to its intricacies. It was the natural exclamation of an ingenuous and inexperienced youth, approaching with proper self-distrust the accumulated experience and learning of ages, and animated with the determination to obtain the entire mastery of the studies to which he had devoted himself. Three hundred years have rolled by, since the antiquarian drew this lively picture of the extent and variety of the science of the law, and of the unceasing toils that await all who aspire to its highest walks. Since that period, the rights of property have been modified in endless varieties; a thousand new sources of litigation have been opened; and all that learning could collect, talent invent, or wisdom apply, have been assiduously employed in rearing a system of jurisprudence adapted to the ever-varying wants and enterprises of industry, wealth and refinement, and accommodated to the new principles of civil and political liberty, which have since started into existence. The comparatively rude and barbarous science of that day, which he contemplated with wonder, lies scattered in fragments around the base of our modern system of jurisprudence, like the ruins of some rude, yet venerable structure of antiquity, around some splendid edifice of modern days, to heighten its beauty and symmetry, by lending to it all the colouring of contrast. Yet with all the advances which this system has made to maturity, and with all the efforts which have been made to give to it the rank of a science, and to impart to it proportion and symmetry, by reducing its arbitrary doctrines to general and connecting principles, the labour of the student has been increased at every step. The decisions which define and illustrate these principles, in all their various applications, have now become so



numerous, that but few can or will pursue rigidly the precept of Lord Coke, by tracing them with all their modifications to their fountain head. The age of *digests and abridgments* has arrived; and these, which were intended as *mere guides for the student*, have become in his hands what the *itinerary* often is in the hands of the traveller. Both of them too often put a stop to inquiry and research, at the very point at which these ought to begin; and *by their aid* the student relies upon decisions which he never read, and the traveller describes countries which he never saw.

There are many causes which will always conspire to prevent the laws of any country from taking the rank of a science, and to render the study of them rather an exercise of memory, than an effort of reason in the application of general principles to particular cases. The want of certain fixed and (if we may be pardoned the expression) mathematical truths in legislation, and the constant necessity of varying and modifying the laws of any country so as to accommodate them to the various states of society, their different degrees of civilization and refinement, and their various exigencies, may be named amongst the most prominent causes of those discordant rules and principles, which disfigure every known system of laws. Men, in view of a present evil or an impending danger, lose sight of every thing else, in their efforts to escape it: and so it is with communities in their legislation. If their laws either produce or fail to correct any particular evil, of which they are made sensible by its actual operation upon them; or if they find them inconvenient or oppressive in their effects upon any particular district or portion of the community, their whole aim is directed to and limited by the correction of the evil actually felt. In applying the remedy, they look not beyond the present evil; not even to the similar cases which must, in the course of events, require the application of a similar remedy: and they do not even pause to contemplate the consequences of the change they introduce. Their course of correction, on such occasions, is like that of the musician, who tunes a particular key without sounding it in consonance with the rest, so as to produce harmony amongst the whole. The result is, that their legislation is continually deformed by local or partial enactments, which are at war with the symmetry of the whole system, and which oftentimes in the effort to amend, "*like the new piece*





*of cloth put into an old garment, only serve to make the rent worse."* The modern systems of codification may obviate this for a time; but these ever operating causes soon destroy their uniformity, and call for the renewal of the process.

In proportion as the laws of any country become a mere collection of *arbitrary and unconnected rules and maxims*, so will the study of them be rendered difficult and disheartening. When these are arbitrary and conventional, it is difficult to obtain complete mastery over them, even if within view and reach; but the difficulty is much enhanced, *when the sources from which they are to be drawn are various, their origin is involved in obscurity, and their common application to the same subject draws them into conflict.*

There is scarcely any state in the Union, in which the latter causes of difficulty and embarrassment exist to so great a degree as in Maryland. Its laws consist of the emanations from three distinct systems: *The usages and laws of England, the mother country: The usages and laws of the provincial or ante-revolutionary government of Maryland, and the laws of its present state government.* And these, too, are subject to certain modifications and restrictions, flowing from the *eminent dominion* of the Constitution of the United States. The difficulties do not consist merely in collating these, and in determining the result of their common operation. This labour would be comparatively light. But when we come to the application of *the usages and laws of England*, we find that even where they have not been superseded by provincial or state legislation, there are yet many of them, which, from their very nature, and as accommodated to a state of society unknown to the colonists of Maryland, are wholly inapplicable; and others, which although applicable, have never been expressly or impliedly adopted. Hence, before this application can be made, it becomes necessary to determine, by enquiry into the usages of the people of Maryland, the decisions and practice of our Courts of Justice, the provisions of our Constitution and Declaration of Rights, and the acts of our Provincial and State Legislatures,—“*what portions of the common and statute law of England are in force in this State.*”

It is manifest, that, at the time of the colonization of Maryland, there were many portions of the laws of England, which





were wholly inapplicable to the condition of the colonists. Thus, as all the lands in the State were held in free and common socage, the numerous rules relative to the rights and incidents of the other species of tenure, were wholly inapplicable; as there were no established orders of nobility, all the laws relating to their peculiar rights and immunities, were also inoperative; and, as the commerce of the colonists was very limited, there were many commercial and revenue regulations, which were wholly unsuited to their condition. To these, might be added many other instances of the absurdity of introducing, *in mass*, the laws of the mother country as the laws of the colony. As has been justly observed by Chief Justice Buchanan, in delivering the opinion of our Court of Appeals in the case of the State vs. Buchanan and others, "They were in the predicament of a people discovering and planting an uninhabited country; and as they brought with them the rights and privileges of native Englishmen, they consequently brought with them all the laws of England, which were necessary to the preservation and protection of those rights and privileges. And hence, it cannot be questioned, that they brought with them all the laws of the mother country, so far as they were applicable to their situation and the condition of an infant colony." (1) Such is the rule of right reason, and the doctrine of the English law, as to its colonies generally, (2) which, in the particular instance, were sustained and enforced by the provisions of the charter, under which Maryland was colonized. (3) Although this is the common principle which sanctions the introduction, both of the common and statute law, yet the tests of their applicability are somewhat different, and we shall therefore consider severally the question of their application.

(1) 5th Harris and Johnson's Reports, 356.

(2) 1st Blackstone's Comm. 107, 2 P. Wms. 75, 2d Salk. 411.

(3) The 10th section of the charter of Maryland declares, that all the subjects of the English crown transplanted to the province and their descendants in any degree, born within the province, shall be esteemed natives, and liegemen of the king, as of his kingdom of England and Ireland; and shall in all things be held, reputed and treated, as the liegemen of the king born within the kingdom of England; and shall have and enjoy all privileges, franchises and liberties of the kingdom of England in the same manner as its liege subjects born within said kingdom, without the hindrance or molestation of the crown. This provision, which placed the colonists in point of liberty and privilege



(1) *Of the introduction and present operation of the Common Law.*

The sources and character of the English common law have been already fully illustrated in the thousand treatises and decisions of the last two centuries. It has had its apologists and its accusers, arrogating to it every excellence, or denying it all merit. By some, it has been styled, "*the perfection of the reason*," and considered as *the thirty-nine articles of the law*, which it were heresy to doubt. Others have denounced it as a system of harsh and arbitrary rules and technical refinements, originating in a barbarous age, which sits like a straight-jacket upon the enlightened and expanding reason of modern days. And there are those who aspire to the privilege "*of shooting folly as it flies*," who ridicule its technicalities and unbending rules, as if they were not inseparable from a science, and as if they were mere jargon and mystery, serving, like Mokanna's veil, to cloak deformity. Whatever may have been the origin of those rules and principles, which constitute what is called "*the common law*," whether they were the emanations of some system of positive laws long since lost, or were built up by the judicial legislation of ages, introducing and adapting principles to the cases as they arose, they are to be admired for some of the very reasons which have been urged against them. Unlike the statute law, they do not limit and restrict their operation by *defined cases*, beyond which they must not go even when a similar evil calls them. They are a collection of principles unrestricted by cases, *except where the restriction of the case is itself the restriction of the principle*. The statute law is a definition of cases: the common law, when properly applied, a definition of principles. In the former, the cases enumerated limit the remedy; in the latter, however new in instance the case may be, the old principles, if appropriate, will apply themselves. With the common law lawyer, "*the ancient ways and land marks*," upon which it is his pride to stand, are the long received and well-as-

upon the most favoured footing of the native subject, was relied upon in all their after controversies with the proprietary and his governors, as entitling them, not only to the benefit of all such English statutes, as they found conducive to their welfare, and protective of their rights; but also to the full advantage of all those privileges and securities, which the English constitution and laws threw around the people of England, for the protection of their liberties.





certained doctrines which inform and animate the system, and describe the general character of the rights it gives, and the remedies by which it protects them. He refers to the treatises which are received as evidence of it, and to the decisions of the courts which record its application, *not for the skeleton of the case, but for the vital principle which is embalmed in it.*

Such a system of principles, if well defined and sufficiently extensive, has in some respects evident advantages over one which rests upon positive regulations, applicable only to specific cases. It may have less certainty; but even this objection ceases, when, as in the case of the common law, the applications of the principles have been so frequent and diversified, as to assign them all their distinctive features. And whilst they are, in the general, sufficiently definite to prevent a misapplication of them, they bring within their operation every case, however new in its facts and circumstances, which in its nature and tendencies falls within their range. *They make a kind of Linnaean system of principles, with all their generic and specific distinctions, as illustrated by their past application to the recorded cases:* so that when any new case arises, we examine it, as we would a new plant, merely that we may discover these distinctions, if present, and classify it accordingly. Such a classification is a classification *by attributes*, whilst that of positive law is too frequently *by facts and circumstances*. Now the facts and circumstances, which surround human transactions, even when they spring from the same motives, or tend to the same end, may be infinitely diversified. They are but the dress of the intent, or the modes by which it acts itself out; and they may take whatever form ingenuity or caprice may suggest. The modes, by which an intent is accomplished, have no necessary connexion with it; and therefore they cannot be relied upon as the characteristics of the intent. Defining an intent by the surrounding circumstances, is like describing a man by his dress, which he may change at pleasure. It is manifest, therefore, that all rules which are intended to operate upon, regulate, or apply human intents, will best accomplish their purpose, by describing the intent, to which they relate by its inherent qualities and attributes; whilst they leave the latter to be collected from the circumstances of any particular case, not as necessary ingredients of the definition of the intent, but as facts which may serve to display the existence of the defining qualities.





Such are the character and objects of the common law, when rightly understood; consisting of principles, which, although not properly susceptible of that expansion *which works a change in the principle*, are not restricted and tied down by the circumstances of their prior application, but do admit of that expansion that *merely displays the hitherto unapplied capacity of the principle*. Such expansions are *the mere unfolding of its coils*. A few instances will illustrate the nature of this capacity. Murder at the common law is defined to be, "the killing of any reasonable creature in being and under the king's peace, (or the peace of the State,) with malice aforethought, either express or implied, by any person of sound memory and discretion." Now here the act of killing, the sanity of the agent, the malice aforethought with which the act is done, and the being of the party slain, when killed, under the protection of the king or state, are all that define the offence; and however novel the circumstances may be, if they display these, the definition attaches. No matter how the intent may act itself out, it cannot escape the grasp of the definition. If the party be poisoned, or starved, or drowned; or by the wilful and unlawful act of the party charged subjected to any condition, of which death was the probable consequence, and which in fact results in death, the killing is imputed to the party. And therefore, when a son exposed his sick father to the air, against his will, in consequence of which he died; and the Harlot exposed her child in an orchard, where it was killed by a bird of prey; and in a more recent case, where a sick apprentice died from the wilful neglect and harsh treatment of his master, all these were held to be cases of murder. So in larceny, the ingredients in the common law definition are: "the felonious taking and carrying away of the goods of another, against his will, and with intent to convert them to the use of the taker." The felonious intent of the party is left to be collected from the circumstances of each case; and if this intent exists, no matter what the mode in which the party may obtain *the bare possession*, it is held to be a taking. If he actually take it without the knowledge and consent of the owner; or if *the bare possession* of it is actually delivered to him by the owner, under some trick or fraud practised by him upon the owner; or if the owner delivers him a *qualified possession*, i. e. for a special purpose; in all these cases, coupled with a felonious intent and conversion



there is in the contemplation of the common law a *taking*; and all the modern cases, which apply in such variety the doctrines of *constructive taking*, are but so many applications of the old principle to the new modes, suggested by modern ingenuity, by which the felonious intent reaches the possession of the property, so as to convert it against the will of the owner. The *borrowing*, the *ring-dropping*, the *false personation* cases, are but so many new species of the old genus. To take but another illustration, borrowed from the rules of the common law, as applicable to civil cases, it is the rule of the common law, "that when any one practises deceit upon another to his damage, the party injured shall have his action for such a damage." Here the deceit practised, and the injury to the party deceived resulting from it, constitute the cause of action. The deceit and the damage must both exist; and where they do concur, no matter in what shape the deceit may come, or through what devious paths it may be traced, or what the character and extent of the injury; the remedy by action on the case applies. Hence, in the case of *Pasley vs. Freeman*, where the plaintiff being applied to for credit in mercantile transactions by a third person, the defendant represented to him that such third person might safely be trusted, he the defendant then knowing that he could not safely be credited, it was held by the court that the plaintiff, upon this general common law principle, might maintain his action against the defendant for such damages as he had sustained by reliance upon the latter's false and fraudulent representations. (4) Such actions are now very frequent; but that case, although decided as late as 1789, was then one "*of the first impression*." The fact, that no such action had ever been maintained, was strongly urged against its maintenance in that instance, and it was indeed held by one of the court to be novel, both in precedent and principle, because it did not appear that the defendant had any interest in the credit given, or colluded with the third person to obtain the credit for him; and that, therefore, it was a mere false affirmation; but the majority of the court held, that, as the deceit and damage concurred, it came within the general principle, without reference to the interest of the party falsely affirming.





The reader, whose mind is imbued with the principles of the common law, will at once recal numberless instances to carry on these illustrations; but what has been said, will suffice to elucidate the character of the system, and to obviate objections, amongst the uninformed, to what are often considered *judicial expansions* of the law. *Judicial legislation* will now and then creep in, to relieve these principles from the narrowness of prior decisions, and to give them a more expanded existence; yet it is rarely applied so as to produce injustice in the particular instance; and the novel principle soon becomes incorporated with the general mass, and is rendered definite and certain, or if inconvenient or incompatible with the general symmetry of the system, is soon lopped off as an excrescence. When new principles are thus intervoven with our laws, although they may be the offspring of usurpation, there is at least one advantage in this mode of adapting our laws to new circumstances, or extending them so as to reach new exigencies, which makes some atonement for the usurpation. The adaptation comes from the hands of one, who has some acquaintance with the system he thus fashions, and who can perceive both the direct and collateral consequences of the change he introduces; and this cannot always be said of the amendments of ordinary legislation. Considered as a system of principles, which, by their simple yet comprehensive definitions, can attach themselves to acts and intents, coming within the spirit of their provisions, whatever the new mode of being which such acts and intents may put on, the common law has, hitherto, in its efficacy presented a striking contrast to that of the statute law. The causes of the contrast will be principally found in the departure of the latter from *the definition by general principles and intents*, and the substitution for it of the *definition by modes and circumstances*. We cannot cite a better illustration of this, than that which is to be found in the history of the statutes of Mortmain, the simple object of all of which was to prevent the alienation of lands to the *all-absorbing clergy*,<sup>o</sup> whose ingenuity, prompted by their avarice and thirst for dominion, for ages kept the statute law lagging behind them. And to come down to our own times, and our own State, we find one equally as striking in the history of our lottery laws. Since the adoption of the State Lottery system in 1817, until the present period,





scarcely a year has passed without some extensive amendment of the laws relating to it, for the purpose of preventing and punishing evasions of it, in the sale of tickets emanating from other systems. Symbols, tokens and devices have been invented in every variety, as substitutes for the prohibited tickets; and supplement upon supplement has been passed to reach each new mode of being; yet, *proteus-like*, the device has taken some new form, and the statute has fallen powerless. The error of most of these statutes has consisted in defining and describing the intent to evade these laws, by the modes in which the intent is accomplished, which modes, as has already been remarked, have no necessary connexion with the intent. The common law, in such a case, would have given a general, searching, and all-pervading definition of the intent, which would have power to insinuate itself into any disguise the latter might put on; and this is the judicious course pursued by the recent act.

With such advantages and capacities belonging to the common law, it may well be questioned whether we should gain by the substitution of a *code*. The principles of the former are simple and intelligible; and in their past application to all the various concerns and transactions of society, they have been moulded into consistence with its exigencies, and into harmony with each other. The treatises and decisions which illustrate them, "with all their lights and shades," may indeed be voluminous; but the commentaries upon a written code, when its principles had been as extensively applied, would not be less so. Nor can any argument against the former be properly collected from their occasional jarring and inconsistency. The system, which would be free from this, whilst applying any but *mathematical truths*, could not be the product of the human mind. So various are its operations in different persons under different circumstances, that the same premises very frequently conduct them to directly opposite conclusions; and without the aid of *precedent* to direct and keep in conformity, different tribunals, in the application of the same general principles to *new cases*, would soon erect very different systems of jurisprudence. Inconsistency may have crept into the precedents and binding decisions which we have; but to them we owe all the certainty which we enjoy, and the exemption of our decisions generally from a state of chaotic confu-



sion. Their general consistency with each other, through a series of ages, is truly remarkable; and is but the consequence of a proper respect for *precedent*. It has given to our laws that degree of *certainty in their administration*, which lifts them up above all the improper feelings and influences that may surround any particular case, which binds down the improper inclinations of the tribunal that may administer them by the fetters of *impartial precedent*, and which makes the expositors of justice on the judgment-seat, as they should be, blind to all but the *influences and authority of the law*. Every age has proved the truth of the maxim, "*ubi jus vagum, ibi misera servitus*;" and the freeman has always found that the safety of his rights and liberties, consists in the certainty of the law which is over them.

At the period of the Colonization of Maryland, *the common law*, and the various statutes which were declaratory of it, were regarded as the bulwark of English liberties; and it was therefore natural that the colonists should jealously cling to them as the most cherished portion of their rights. Hence, we find that they were received and acted upon in the colony, from its very infancy. It is true, that in the first assembly of whose proceedings there is any record, viz. that of 1637, a discussion took place upon the question, "*by what laws the colony should be governed*," in the course of which the laws of England were proposed as the laws of the province, until some could be agreed upon by the proprietary and the colonists; but it is evident from the causes and character of the discussion, that this question had relation only to high criminal offences. The proprietary in exercise of a power of originating and propounding laws, then claimed by him, had transmitted from England a body of laws for the adoption of the Assembly. These were rejected by the Assembly; and the province was thus left without any laws of its own enactment. In this situation, the question was propounded; and upon the laws of England being proposed, the governor, who was president of the Assembly, replied that he had power by his commission to proceed in civil causes according to those laws, and also in all criminal cases except those which extended to life or member. His reply shews, in part, what was the true rule of judicature in the province, and to what extent the common law was adopted for several years after the first settlement. Upon an examination





of the instructions from the proprietary to his brother Leonard Calvert, the lieutenant governor, as contained in his several commissions of 1637, 1642, and 1644, and of the rule of judicature as prescribed by the successive acts of 1638, chap. 2d, 1641, chap. 4th, 1642, chap. 4th, and 1646, chap. 2d, it appears that the common law; as far as it was applicable, was in full force, and was adopted and acted upon, during the continuance of these commissions and acts, in all cases, except where its operation extended to the deprivation of life, member or freehold. *Life, member, or freehold* could not be taken away, except by some express law of the province; but in all other cases, the common law, when not superseded by the laws of the province, was to be applied by the judges, so far as they found no inconvenience in its application to the colony. The act of 1662, chap. 3d, which took the place of the act of 1646, directed that when the laws of the province were silent, justice should be administered according to the laws and statutes of England, if pleaded and produced, "*and that all courts should judge of the right pleading and inconsistency of the said laws with the good of the province, according to the best of their judgment, skill and cunning.*" Before the passage of this act, the institutions of the province, the process of its courts, and the forms of proceeding therein, were modelled upon the rules of the common law; and it was already interwoven with all that related to the rights and liberties of the colonists. This act of 1662, whilst it still left it to the courts to apply the English law according to the wants and convenience of the province, dispensed with the exceptions of the antecedent acts, and made the existing common law *the ultimate guide* in all cases: and it thus engrafted upon the jurisprudence of the province, the common law in mass, so far as it was applicable. This act soon ceased, and the rule of judicature, contained in it, was not long established *by express law of the province*; but from that moment, the commissions issued to the judges sanctioned it as a rule of judicature, and the common law became and continued to be a component part of the laws of the province, until the overthrow of the proprietary government, and the adoption of our present state constitution. It does not appear, from an examination of all the subsequent contests between the proprietary and the people of the province





about the extension of the English statutes, that these controversies ever drew into question the operation of the common law, or of the statutes which were merely declaratory of it. Some of the arguments urged, in the course of the discussions growing out of it, by the proprietary and the court party, (as his adherents were called,) if pushed to their full extent, would have justified even the exclusion of the common law. The colonists were likened to a conquered people, who were not entitled to the benefit of the laws of the conquering country, except so far as they were expressly extended to them. But these arguments were confined in their application, to the adoption of the statutes; and the operation of the common law seems to have been conceded on all sides. (5)

Upon the adoption of our present state government, the 3d article of our Declaration of Rights, expressly declared, "*That the inhabitants of Maryland were entitled to the common law of England and the trial by jury, according to the course of that law.*"—Thus it exists in Maryland in full force, in all cases where it has not been superseded or repealed by statute, and is applicable to the character of our government, and our condition as a people. In the case of the State vs. Buchanan, above adverted to, the effect of this general declaration was much discussed. That case was a prosecution for a conspiracy, in the progress of which it was contended for the defence, that even if the law of conspiracy were admitted to be the creature of the common law,

(5) The remarks in the text are justified by a thorough examination of all the discussions connected with the controversy between the proprietary and the Assembly, about the extension of the English statutes, which commenced in 1722, and was not terminated until 1732. A full history of the causes and results of this controversy is given in the conclusion of this chapter, from which it will appear that the proprietary's objections related solely to the statutes. In all the addresses and messages which passed between him and the Assembly, we find that the operation of the common law is not only not denied, and therefore impliedly admitted; but also that its admitted existence is relied upon as furnishing analogies to sustain the extension of the statutes. A single extract from the address of the lower house to the proprietary, adopted at October session, 1725, evinces its universally admitted existence: "*But since (says that message) we mention the common law, we beg leave to observe concerning it, that we do not apprehend your lordship denies us the benefit of it, as being [by the common-received opinions of the best lawyers] allowed to be our right; but 'tis the statutes only you deny us.*" And relying upon this admission, the message then founds upon it an argument in favour of the extension of the statutes.



it could not be sustained in the extent necessary for that prosecution, by a resort to the law of conspiracy, as understood and illustrated by the decisions of the English courts at the time of the colonization of Maryland: that the decisions of the English courts, since that period, which had gone to the extent of the present prosecution, were expansions of the common law, *new both in instance and in principle*; that the common law, as introduced and adopted by the colonists, was the common law as explained and defined at the time of the colonization, and not as it has since been expanded in England by judicial decisions; that the common law, in general, was not adopted in Maryland, except so far as it was applicable to the condition of the province or state; that the proper test of its applicability was to be found in the fact of its having been used or practised upon in the province or state; and that in the particular instance before the court, as there was no precedent of any such prosecution in the provincial or state courts, it could not therefore be sustained. The prosecution was, notwithstanding, sustained by the Court of Appeals, in a very elaborate opinion, which furnishes the proper and existing rule as to the operation of the common law. In the course of it, and in remarking upon the argument, that the later decisions were expansions of the common law, the court say, "It is a mistake to suppose that the decisions, subsequent to the charter, are expansions of the common law, which is a system of principles not capable of expansion, but always existing and attaching to whatever particular circumstances may arise and come within one or the other of them," *and in adverting to the argument from non-user, they reply*, "that as to the common law, unlike a positive or statute law, (the occasion or necessity for which may have long since passed by,) if there has been no necessity before for instituting such a prosecution as the present, no argument can be drawn from the non-user, for resting on principles which cannot become obsolete, it has always potentially existed, to be applied as occasion should arise," and, in conclusion, they pronounce the existing rule of application under the bill of rights, which cannot be better stated than in the words of the opinion." "The language of the 3d section of the Bills of Rights, (says the opinion,) in declaring the people of Maryland entitled to the common law, has no reference to adjudications in England anterior to the





*colonization, or to judicial adoptions here of any part of the common law during the continuance of the colonial government : but to the common law in mass, as it existed here either potentially or practically, and as it prevailed in England at the time ; except such portions of it as are inconsistent with the spirit of our present government, and the nature of our new political institutions."* (6)

(2) *Of the introduction and operation of the English statutes under the proprietary government.*

The preceding remarks upon the introduction of the common law, have already exhibited the rule of judicature and the operation of the English laws in general within the province, previously to the passage of the act of 1662, chap. 3d. The instructions to the governors, and the antecedent acts of 1638, 1641, 1642 and 1646, drew no distinction between the common and statute law, nor even between the English statutes existing at the time of the emigration, and those subsequently enacted. Where they were to be resorted to, the English laws in general were adopted. The general rule as to *civil cases* was, that they were to be judged according to the laws and most general usage of the province ;

" (6) 5 Harris and Johnson, 357 and 358.—" The common law of England (says Chase, C. J. in delivering his separate opinion in that case) was adopted by the people of Maryland, as it was understood at the time of the declaration of rights, without restraint or modification. Whether particular parts of the common law are applicable to our local circumstances and situation, and our general code of laws and jurisprudence, is a question that comes within the province of the courts of justice, and is to be decided by them. The common law, like our acts of Assembly, is subject to the control and modification of the legislature, and may be abrogated, or changed, as the General Assembly may think most conducive to the general welfare : so that no great inconvenience, if any, can result from the power being deposited with the judiciary to decide what the common law is, and its applicability to the circumstances of the state, and what part has become obsolete from non-user or other cause, 5 Harr. and John. 365. And again in 5 Harr. & John. 367, he further remarks : " I consider the adjudications of the courts of England, prior to the era of the independence of America, as authority to shew what the common law of England was in the opinion of the judges of the tribunals of that country, and those since that time to be respected as the opinions of the enlightened judges of the jurisprudence of England." The opinion of the Court of Appeals in the case of Dashiell vs. the Attorney General, 5 Harris and Johnson, 401, is to the same effect.





and if these were wanting, then according to equity and good conscience; not neglecting the rules of the English law in similar cases, so far as the judges were informed of them, and found no inconvenience in their application. *Criminal cases*, in general, were to be decided according to the laws of province, if any in existence and applicable; and, if not, then by the laws or laudable usages of England, in the same or similar cases. *The exceptions* to these general rules were, that neither life, member nor freehold were to be affected without some express law of the province.

The act of 1662, chap. 3d, directed that when the laws of the province were silent, justice should be administered according to the laws and statutes of England, if pleaded and produced; and that the courts should judge of the right pleading and consistency of those statutes with the good of the province. Thus the laws of England, whether existing before or after the emigration, were made the ultimate rule of decision, applicable to all cases whatsoever, so far as they were consistent with the good of the province; and the judges were invested with the dangerous discretion of determining whether they were so consistent, and of admitting or rejecting them according to their own views; and thus was fully introduced and sanctioned that species of *judicial legislation*, to which we owe most of the English statutes now in force in our State. The power confided was not only dangerous, because of the discretion permitted to judges created by the proprietary, (whose views as to the statutes were generally antagonist to those of the people;) but also because it made these statutes a rule of conduct to the colonists, to whom they were not published, and to whom they might be entirely unknown, until they were pleaded and produced. The general and constant anxiety, on the part of the colonists, to obtain the benefit of these statutes on any terms, and their willingness to confide any discretion which might contribute to the attainment of that purpose, evidence the high estimation in which they held the institutions of the parent country, as conducive to the liberty and happiness of the subject. *Its laws* were a fountain from which they always wished to draw; and thence flowed to them those notions of civil and political liberty, which they collected and preserved in every moment of emergency, both against the crown and the proprietary; and



under whose nurturing influence their institutions ultimately ripened into the free and happy government under which we live.

In the next year, another act was passed of the same import with the act of 1662, viz. the act of 1663, chap. 4th, which appears to have existed concurrently with the act of 1662. At this period, and for some years afterwards, many laws were passed, which were neither assented to, nor dissented from, by the proprietary; and although, in such cases, the laws endured until the proprietary's dissent was declared; yet the Assembly, through abundant caution, continued to re-enact them. The act of 1663 was at length dissented from by the proprietary, in 1669, and formally repealed by the general repealing act of 1676, chap. 2d. The proprietary was now personally present in the province; and as from the want of definitive assent to, or dissent from many of the laws, there was some uncertainty as to those which were operative, this general act of 1676 was passed, which saves the act of 1662, and repeals that of 1663. By the general repealing and confirming act of 1678, chap. 16, the act of 1662 was repealed, and that of 1663 revived, excepting only that clause of it which gave the judges the power of judging of the consistency of the statutes with the good of the province: and thus they became *positive*, although *secondary* guides in the decisions of the courts. In this State, the rule of application was kept up, until 1684, by the successive acts of 1681, chap. 11th, and 1682, chap. 12th.

As early as 1674, an attempt had been made to determine, *by law*, what criminal statutes of England were in force in the province; and the object being approved of by both Houses of Assembly, a joint committee was appointed to report a bill for that purpose. After the act had been prepared, the Lower House insisted, that it should extend to civil as well as criminal cases, and that it should contain a saving of all the laws of the province not repugnant to the laws of England. The Upper House then took the ground, that mischievous consequences would flow from a general introduction of the English statutes, without a reservation of the power to judge of their consistency with the convenience of the province; and, in consequence of the disagreement between the two Houses, the object of the conference was not accomplished. (7) The act of 1678 having accomplish-

(7) Upper House Proceedings, Liber FF, 220 and 245.





ed the views of the Lower House, by introducing the statutes in mass, without any reservation as to their consistency, and the subsequent continuing acts, having kept up this rule until the session of 1684, this subject of disagreement was revived by an act relative to the rule of judicature, adopted by the Lower House at this session, which proposed to continue the rule as settled by the act of 1678, the proprietary, who was then in the province, now took his stand in favour of the old rule of extension: and in his message to the Lower House opposing the general introduction of the statutes, he objected, that it was not safe to have justice administered according to the laws of England, when the laws of the province were silent, without due regard had to the constitution and present condition of the province: that it appeared to him unreasonable, whilst the freemen of the province possessed the powers of legislation conferred by the charter, that they should be concluded by such of the laws of England as might ruin them, or at least be greatly injurious: and that he was willing to assent to the general introduction of the statutes, if the judges were permitted to judge of their consistency with the condition of the province, but not otherwise. The Lower House did not accord with him in his views, but maintained the ground which they had originally taken; and the consequence was, that the previous acts were suffered to expire. (8)

In 1689, the government of the province was wrested from him by the Protestant Associators, and passed thence into the hands of the crown; and the government of Maryland then became and continued a *royal government* until 1715. During this *abeyance* of the proprietary government, the act of 1692, chap. 36, revived the rule of the act of 1678; but this act, if it did not expire before, was repealed by the general repealing act of 1700, chap. 8: and no further legislation upon the subject took place during the suspension of the proprietary government. Yet the act of 1662 had engrafted upon the jurisprudence of the province, the power of the courts to give efficacy to the English statutes, so far as they were consistent with the condition of the province; and the exercise of this power was kept up under the sanctions of the commissions issued to the judges, although the legislative sanc-





tion was withdrawn. There was the less opposition to this, as the objections to the introduction of the statutes were personal to the proprietary, (who was unwilling to diminish the importance of his legislative veto,) and had therefore passed away with his government. During this interval, there are several instances of the exercise of this power on the part of the courts, in giving operation as well to statutes passed after the emigration, as to those passed before. (9) We find this illustrated, not only by the proceedings of the courts, but also by the messages between the two Houses, connected with the passage of the act of 1706, chap. 8th, expressly introducing the English statutes of 1st James 1st, chap. 11th, against bigamy, and the toleration act of 1st William and Mary, chap. 18th, with all the penal acts therein mentioned. Before the passage of that act, the provincial records shew several prosecutions for bigamy, predicated upon the statute of James; and the message from the Upper to the Lower House, which gave rise to the act of 1706, sets forth that several persons had been presented in the provincial courts, and in Anne Arundel county court, for bigamy, and for suffering Quaker conventicles to be kept in their house; and that the justices were at a stand as to these prosecutions, as it appeared to them that the statutes on which they were founded, were wholly restrained to his majesty's subjects residing in England. It therefore recommended either that these laws be *declared* to extend to the province, *for the better satisfaction of the courts of justice*, or that some laws be passed to restrain such offences. Towards the close of the royal rule, viz. in 1714, the subject was again *mooted* in a message from the Upper to the Lower House, in which they propose to ascertain the opinion of lawyers, as to the extension of the general statutes; but no such enquiry appears to have been made, probably because, in a very short time afterwards, the proprietary government was restored, and the question as to the extension of the statutes thereby assumed a new complexion.

Upon the restoration of the proprietary in 1715, the old motives for dissension were revived, and soon produced an open

(9) Amongst these may be particularly mentioned the cases in 1707, upon the stat. 7th, Wm. 3d, regulating trials for high treason, and those in 1711, upon the stat. 21st, Jac. 1st, relative to the murder of bastard children.



conflict. The proprietary was unwilling that the statutes should be introduced in mass, because he regarded their introduction as inconsistent with his right under the charter, co-equal with that of the freemen of the province, to participate in the enactment or introduction of laws. The people on the other hand, were unwilling to restrict themselves by any particular enumeration of the statutes which they deemed applicable, and preferred either adopting them in mass, or leaving to the courts an unlimited power of introducing them in all cases where they were consistent with the good of the province. Such an enumeration might not only have precluded or drawn into question the operation of some of the statutes which they prized most highly; but it would also, probably, have put a stop to the introduction, from time to time, of such statutes as might be subsequently passed. They preferred, therefore, to leave the door open for their introduction, whenever the occasion might demonstrate that they were for the advantage of the colony; and, in adopting this course, they pursued the discreet plan of the English parliament for the preservation of their privileges, by keeping them indefinite, as a security against the encroachments of the crown.

The controversy on this subject, between the proprietary and the people, was opened by the passage of an act at October session, 1722, entitled "*an act for the limitation of actions of trespass and ejectment;*" and the direct cause of the controversy was as to the extension of the English statute, 21st. Jac. 1st chap. 16th, the existence of which in the province had been denied by two decisions in the provincial court, (one in 1712, and the other in 1714,) but was recognised by this act of 1722. At this session the Lower House also adopted a series of resolves, vindicatory of their liberties, and exposing the grounds upon which they claimed the benefit of the English statutes. These resolves are couched in forcible and manly language, and breathe that spirit of freedom, and that determination to maintain their liberties, for which *the Commons* of Maryland were ever remarkable. They show us in the bud the same free and fearless spirit which bloomed in the times of the revolution; and they, in common with the rest of our colonial history, teach us that *that revolution did not originate but merely vindicated our liberties; and that our land has always been freedom's favoured soil.* By these resolves, the committee of





aggrievances, (as it was called,) was clothed with the character of a committee of courts of justice; and, as such, was required to examine the commissions issued to the judges and justices of the several courts, for the purpose of ascertaining what alterations had been made in them, and particularly in that part of them which required the judges and justices to hear and determine cases before them, according to the laws, statutes, ordinances, and reasonable customs of England, and this province, and to report such alterations, if any, to the House. They declared also "that the province was not to be regarded as a conquered country, but as a colony planted by English subjects, who had not by their removal forfeited any part of their English liberties: *that the inhabitants of the province had always enjoyed the common law, and such general statutes of England as are not restrained by words of local limitation, and such acts of Assembly as were made in the province to suit its particular constitution as the rule and standard of its government and judicature; such statutes and acts being subject to the like rules of common law, or equitable construction, as are used by the judges in construing statutes in England; and that all who advised the proprietary to govern by any other rules of government were evil councilors, ill-wishers to the proprietary and to their present happy constitution, and intended thereby to infringe the English liberties of the province, and to frustrate, in a great measure, the intent of the crown in granting it to the proprietary.*" For the purpose of preventing all misapprehensions as to the character of these resolves, and of presenting them in a manner calculated to conciliate the proprietary, they further declared, "that they were not occasioned by any apprehension that the proprietary had ever infringed, or intended to infringe, the liberties or the privileges of the people, or to govern otherwise than according to the usage and custom of the country since its first settlement; *but were intended merely to assert their rights and liberties, and to transmit their sense thereof, and of the nature of their constitution, to posterity.*"

These resolves, so characteristic of the firm and manly spirit of the people of Maryland, became "*the Magna Charta*" of the province. Although they sprang from this contest about the statutes, they did not cease with the occasion which gave them rise. Not only were they re-adopted by the Lower House, from





time to time throughout the pendency of this contest; but also at many sessions of Assembly subsequent to its termination, even down to the period of the revolution. On all after occasions which drew into question what they conceived to be their constitutional rights and privileges, or involved them in conflicts with the proprietary, because of the exercise, by him or his officers, of powers incompatible with their English liberties, the Provincial Assemblies substantially adopted them as the exposition of their rights, and of the principles on which they maintained them. They were, however, of too bold and decided a character to receive, at once, the sanction of the Upper House of Assembly, which, from its very constitution, inclined to the side of the proprietary: and, therefore, at this session of 1722, this House declined acting on them. At the session of September, 1723, the proprietary's dissent to the above mentioned act of 1722, was communicated to the Lower House. This dissent, which bears date the 19th March 1722, (old style) assigns as the reason for the rejection of the act, that it was not only explanatory of an English act not in force in the province, but that it also seemed, by implication, to introduce English statutes *which had always been held not to extend to the plantations, unless by express words located there*. "You are not only (says the proprietary in his instructions to the governor) not to permit any such practice to take place in Maryland, but even to discountenance any doubts concerning the same; and when any of the English statute laws are found convenient, and adapted to your circumstances, you ought specially to enact such of them as you may deem useful, and not by an act of the province introduce them *in the lump*."

The proprietary and the Lower House were now fairly at issue upon this important question; and a contest ensued, which endured for nearly ten years. In the progress of it, the inhabitants of the province were divided into two parties, the one called "*the court party*," consisting of the immediate retainers and adherents of the proprietary, and the other "*the country party*," consisting of the Lower House, and the great body of the people of the province. The papers emanating from the Lower House during this period, in relation to this subject, are characterised by great ability and research; and the talents of the province were all enlisted on the side of the people. Some of these papers are from the pen of



the elder Daniel Dulany; a name which seems to have carried talent with it in every generation. It would, perhaps, be difficult to sustain the positions taken by the Lower House, upon the generally received doctrine as to the extension of the statutes of a mother country to its colonies, or upon any other ground than that of the long received practice and rule of judicature of the province. The people of Maryland did not intend to recognize the right of Parliament to bind them by laws, to which they had not assented. They studiously denied this on all occasions when that right was to be exercised in the imposition of burdens. They did not rely upon the right of parliament to enact; but upon their own right to adopt and make their own, all such of the English statutes as might be found beneficial, or protective of their liberties. The proprietary's dissent having put the Lower House fairly in the lists against him, that house at once appointed a committee to inspect the ancient records of the province, and to examine how far the laws and general statutes of England had been received in the courts of the province. At that session, a very elaborate report was made by this committee, after a full examination of the parliamentary and judicial records of the province, which sustains to the full extent the right claimed by the Lower House. They report, "that in the earliest times, there were as many instances of decisions by the general statutes of England, (without any objection or opposition,) as there were cases that could be affected by them, and a continuation of such decisions until the government was taken into the hands of William and Mary; and that all the time the government continued immediately under the crown, as many cases both criminal and civil, as came within the province of the statutes, were determined by them; which course has been continued ever since, to the restoration of the government to the proprietary, except in some particular cases when the circumstances of this province rendered the form of proceedings prescribed by some acts of parliament impracticable, and where they have been altered by act of Assembly; the people always claiming and insisting on the rights and privileges of English subjects, and the laws of their mother country, as their indisputable right, and as agreeable to the charter." The report then sets forth a series of abstracts from the records, to evince the truth of its representations as to





the constant course of judicature in the province; upon which it remarks, "that, although many of the records were lost, in the time of the revolution, in removing the records from St. Mary's, and when the State House was burned, yet the collections which they have made are sufficient to show, that both the governors and the people governed, within the province, since its first settlement, or at least since there are any traces of Assemblies and judicial proceedings, have always deemed the general statutes of England to have the force of laws in Maryland." (10) Upon this report, an address to the proprietary was adopted by the Lower House, (October 21st, 1723,) in which they broadly asserted that the statute of limitations was in force in the province, because it was a general statute, without words of restriction, and therefore extended to all his Majesty's dominions, and because of the words of the charter securative of their English liberties. They allege, also, "that such statutes have always been held to extend to the province, and that persons have even been convicted and executed under them; and that if their right to them were dependent upon their re-enactment in the province, they would then hold them by the precarious tenure of his pleasure, in yielding or withholding his assent." At the session of 1724, the Upper House, not yet having acted upon the resolves of 1722, their attention was called to them by a message of the Lower House, which reminded them, in sneering terms, of their default, and informed them that inasmuch as the oaths lately taken by some of the judges did not conform to those resolves, they had directed the Attorney General (he being a member of their House) to prepare a proper form of such oath. This form was accordingly prepared and transmitted to the Upper House for their adoption.

(10) It is much to be regretted, that the abstracts from the records, which made a part of this report, are not to be found; the journals of 1723 are lost, and the only record which we have of them is to be found in a printed collection of the material parts of them, made under an order of the Lower House in 1724. This collection omits that part of this report, for which it refers the reader to the Journal. It contains, however, a report made, October 19th, 1724, as to the Commissions from 1692 down to that period, which evidences that during all that period, although the legislative rule of judicature was withdrawn, the commissions to the judges until just before the commencement of the controversy directed them to judge according to the laws of England, where the laws of the province were silent.





It directed that the rule of judicature should be, according to the laws, statutes, and reasonable customs of England, and the acts of Assembly, and the usage of the province. It was objected to by the Upper House, as permitting to the judges the arbitrary introduction of the statutes, without regard to the convenience of the province; and various messages were interchanged between the two Houses, in one of which the Lower House remarks: "we have never yet heard of any inconvenience arising from doubts as to the extension of the statutes: nor did we ever hear of different judgments concerning the extension of any English statute, unless in one case concerning the statute of limitations, when one of your honors was one of the judges that filled the provincial bench; and we cannot think that instance deserves your notice, since the opinion was grounded on no precedent, and was manifestly contrary to the whole course of judicature in the province, and well known to be against the charter, and inconsistent with our constitution." The rest of this message, and the other messages of the Lower House in connexion with it, are couched in the same bold and expostulating language: and they ultimately led to an agreement between the two Houses, that the clause in the oath, as to the rule of judicature, should direct the judges to determine according to the laws, statutes, and reasonable customs of England, and the acts of Assembly, usages and *constitution* of the province.

At the session of October, 1725, the address of the governor, in sustention of the proprietary's views, cited as illustrations of his doctrine the habeas corpus act, the statutes of usury, and the statute of frauds and perjuries, which, says he, have often been held not to extend to the plantations, and yet they are general laws. This elicited a reply from the Lower House, in which they entered at large into the general question, and into the consideration of the particular instances cited by him: and another act of Assembly was now passed in conformity with their original views. This act of 1725, chap. 1st, and the succeeding act of 1727, chap. 1st, were both dissented from by the proprietary; and at length, at the session of October, 1728, a form of a judge or justice's oath was transmitted by the proprietary to the province, and under his instructions submitted by the governor. This form directed that justice should be administered according to the acts and



customs of the province; and, when these were silent, "according to the laws, statutes and customs of England, as have been used and practised in the province:" and was *unanimously* rejected by the Lower House, because it would exclude them from the advantage of *future* beneficial statutes, and would lead to endless disputes as to what statutes had been used and practised upon. The question would be, says the report adopted by the House, "whether the act had been used or (which is the same thing,) *whether any judgment given upon it*: and such questions could not be determined in many cases, even when the statutes have been the foundation of the decisions; since in many of them the reasons or arguments do not appear, nor is it customary to mention general statutes in pleadings, although the judgment of the court is founded on them." (11) Still adhering to their original views with some slight alterations to meet the views of the Upper House, another act was passed at this session, ascertaining the form of the oath, viz. the act of 1728, chap. 1st. This, also, was dissented from by the proprietary; and a new attempt was made at a compromise by the succeeding act of 1730, chap. 1st, which rendered operative the reasonable customs of England, and the statutes thereof, then or thereafter to be enacted, agreeably to the usage or constitution of the province. The proprietary rejected this act also; and a form was at last determined by the act of 1732, chap. 5th, which received his assent. This act, which prescribed the form of the oath of a judge or justice, as it continued from that period until the revolution, made the acts and usages of the province the primary guide; and when these were silent, the rule of judicature then was, according to the laws, statutes, and reasonable customs of England, *as used and practised within the province*.

The controversy thus terminated in partial submission to the will of the proprietary; but the Lower House had accomplished all their purposes. They had not only brought about a recognition of their right to such of the statutes as had been adopted in the practice of the province; but they had also couched this recognition in such general terms, as to permit the *future* introduction of English statutes. The words "*as used and practised*" in this

(11) This report and the address which followed it, are from the pen of the elder Daniel Dulany.





act, might relate either to what had been the usage and practice of the province in adopting English statutes, as a practice sanctioned and to be continued, or to the previous use and practice of these statutes as the test of their applicability: and even if the latter construction were adopted, the practice which was to give them efficacy, was not by the express terms of the act, a practice anterior to its passage but only to the time of the application of the statute as a rule of judicature. This *subterfuge* accomplished all its purposes: for from that period until the revolution, the courts continued to exercise the power of adopting and giving effect to such of the statutes as were accommodated to the condition of the province without regard to the enquiry, whether they had been practised upon or enacted previously to the act of 1732.

Upon the occurrence of the revolution, and the adoption of our present constitution, the third section of the bill of rights, accompanying it, declared "*that the inhabitants of Maryland were entitled to the benefit of such English statutes as existed at the time of the first emigration, and were found applicable to their local and other circumstances; and of such others as have since been introduced, used and practised upon in the courts of law and equity.*" This declaratory article, it will be perceived, has drawn a distinction, between the statutes in existence at the time of the establishment of the colony, and those subsequently enacted. The statutes of the first mentioned class, are declared to be in force so far as they had been found *by experience* applicable to the local and other circumstances of the colony; and those of the latter class, where they have been introduced, used and practised upon in our courts. However, both these tests of applicability consist in "*the use of and practice upon the statutes.*" "It does not appear to the court (says the General Court in delivering its opinion in the case of *Whittington vs. Polk*) that there can be any other safe criterion by which the applicability of statutes, existing anterior to the emigration to our local and other circumstances, can be ascertained and established, *but that of having been used and practised under in this State.*" (12) Yet this test appears to be more comprehensive, than that which determines the applicability of





statutes passed since the settlement of the colony. The latter is expressly restricted to *use and practice in the courts*: whilst the former consists in that *use and practice generally*, which constituted the *experience of the colony*. The General Court indeed, seemed to have considered the rule applicable to statutes passed before the emigration, as substantially the same with that applicable to statutes passed subsequently; and hence, in the case of *Pancoast vs. Addison*, they decided that the statute 32d Henry 8th, chap. 2d, sect. on 2d, did not extend to Maryland, "the court not knowing, (say they,) of any *judicial decision* by which the same has been adopted and introduced into this State as the law thereof." (13) Yet there were many statutes of such a character, that they might have been used and practised under in the province without the intervention of courts of justice: and such use would manifestly be a part of the experience of the colony. Judicial decisions are merely the evidence of its experience. (14)

It is much to be regretted that the question as to the applicability of English statutes, should have been suffered to rest, until this day, upon the general tests of the bill of rights, without a full and definitive ascertainment of the statutes falling within the operation of those tests. This condition of the question has given rise to doubts and controversies, which even now are not exhausted. To obviate these, in 1809 the legislature empowered the Chancellor and Judges of the Court of Appeals, to ascertain and report the English statutes which were applicable under the tests of the declaration of rights, designating particularly such parts of them as it might be proper to incorporate into the statute law of the State. (15) This duty was wholly performed by the late Chancellor Kilty, in a report which arranges the English statutes from Magna Charta to the year 1773, into three several classes, the first embracing *the statutes not applicable*, the second the *statutes applicable but not proper to be incorporated*, and the third those which were *both applicable and proper to be incorporated*. The object in calling for this report was to ascertain the latter statutes, so that they might at once be specifically adopted to the exclusion

(13) 1 Harris and Johnson, 356.

(14) See 2d Harris and Gill, 106, and 5 Harris and Johns. 402.

(15) A resolution of the same character was passed as early as 1794: but from some unknown cause it was never carried into effect.



of all other English statutes: but the report being made, this object was overlooked, and the Assembly contented itself with the publication and distribution of the report. (16) The only effect of this report has been, to collect from the colonial records, and the tradition of experienced lawyers, the evidences of practice upon the statutes: and as the *repository of these*, it is received and respected by our courts, and seems to be regarded by them as an *authoritative* guide in all cases of doubt. (17) Yet the *existence* of a law should not even be a subject for doubt, and its enactments should be accessible to all. The English statutes in force in this State, should therefore be definitely ascertained; and published at large under the authority of the State as a part of its statute law; or they should be re-enacted, so as to give them a place in our ordinary statute book. In the plan for a digest of the statute law of Maryland, which was adopted by the legislature a few years since, and which is being accomplished, the propriety of incorporating these statutes into it, does not appear to have been considered. This defect in the plan may yet be remedied by enlarging the instructions to the commissioners, as no part of that plan has yet been perfected.

(16) Resolutions, 22d of November session, 1809, 20th of November session, 1810, 33d of November session, 1811, and 69th of December session, 1816. A *chart* of the statutes applicable and proper to be incorporated has been compiled and published by Alcæus B. Wolfe, Esq. of this city. This chart presents this class of the English statutes in a natural and compendious form, which gives to the student or practitioner great facilities in his reference to them; and if Mr. Wolfe, in a new edition of this chart, would but attach to his notice of each applicable statute, a reference to all the decisions of our courts since the revolution, which expressly or impliedly admit or assert the existence of such statute, it would be rendered still more valuable.

(17) In the case of *Dashiell vs. the Attorney General*, 5th Harris and Johnson, 403, Buchanan, C. J. delivering the opinion of the Court of Appeals remarks, "This view of the third section of the bill of rights raises the question, which of the statutes existing at the time of the first emigration had by experience been found applicable? The only evidence to be found on that subject is furnished by Kilty's report of the statutes, in which the statute of 43 Elizabeth, *ch.* 4, is classed amongst those which are said not to have been found applicable. *That book was compiled, printed and distributed, under the sanction of the State, for the use of its officers, and is a safe guide in exploring an otherwise very dubious path.*" Upon the authority of this report the Court of Appeals therefore decided that this statute was not in force. See also the case of *Koonce vs. Madox*, 2d Harris and Gill, 106.





The preceding remarks relate solely to that introduction or adoption of the English statutes in this State, which rests for its sanction *exclusively upon the practice of the colony or its courts*, in contradistinction to that *which carried with it the sanction of express law*. Many of the English statutes were enacted *expressly for the colonies, or expressly* extended to them: and in such cases the statutes were received and respected as laws of the colony, except when they entrenched upon *the right of internal taxation*, which was claimed by the colonies generally for sometime before the revolution, as *their exclusive right*. Others of the statutes were expressly adopted by acts of the Assembly. These cases of *legislative extension or introduction* of the English statutes are free from all doubt or difficulty: but those in which the statute acquired the force of law by *mere practice upon it*, demanded a full examination of the origin and character of that practice. The English statutes thus introduced by *colonial usage*, and resting upon it alone for their efficacy even at this day, may truly be called "*the common law of Maryland*:" and the history of their adoption, whilst it illustrates their present existence, is at the same time a proud memorial of the firmness with which the colonists of Maryland always asserted and vindicated their liberties.





# HISTORICAL VIEW

## OF THE

# GOVERNMENT OF MARYLAND.

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## CHAPTER I.

### OF THE PROPRIETARY GOVERNMENT OF MARYLAND.

The *Proprietary Government*, under which the colony of Maryland was established and grew up, and from which it passed to its present rank of a free and independent State, is known to the people of Maryland in general, if at all, but by its name. They have heard of its existence, as we hear of that of Prester John, or the wandering Jew: and they listen to the story of its being, as if it were a tale by-gone times, which to them, has nothing to excite interest, or even tempt curiosity. And yet it was the government under which a feeble and destitute colony of two hundred persons, planted in the wilderness at the mercy of the savage, has become the prosperous, powerful, and independent State, where peace, plenty, and cultivation, are on every border, and there is scarcely a trace or tradition to tell, that it was once the red man's soil. Our citizens know not, nor do they in general seek to know, the structure and tendencies, of the institutions associated with that government: and yet they were the mould in which our present state institutions have, for the most part, been fashioned, and from which they have derived many of those peculiar features, that give them excellence in our eyes at this day. They pause not to enquire into the origin of those principles of civil and political liberty, under the influence of which, at the aera that gave independence to their State, their ancestors rose as one man in vindication of their rights as freemen, and staked upon the issue which involved their liberties, their lives and fortunes also.

Connection of the colonial history of Maryland with its present government and condition.



And yet if we look back to the history of that proprietary government, we find in it the very seeds of those principles which animated the fathers of the revolution in our State in the hour of danger and difficulty: and in the free institutions which were established under it, we recognize the school in which they imbibed their just notions, of the true object and proper extent of government, of their rights as individuals, and of their degree of dependence as a colony. In fine, all that relates to the colonial existence and condition of Maryland is intimately connected with the present: and if we would know the causes which so speedily converted her infant colony into a prosperous people, diffused over her whole surface, and in quiet possession of her soil with scarcely a single act of rapine or bloodshed to stain its acquisition, we must look for them not merely in the character and temper of her people, nor in the fertility of her soil. We must look beyond these, to the free nature of the government and its institutions, and to their gentle and benign administration, which invited population, and stimulated industry, by securing the civil and religious rights of the citizen, and freeing the products of his labor from the burdens and exactions of arbitrary power.

Thus associated as the recollections of this departed government are, with all that exhibits our progress to maturity as a people and the development of our free institutions, with all that appeals to our pride and awakens our gratitude, and with all that stimulates to the most jealous care of the liberties preserved and transmitted to us through the difficulties of colonial dependence, they proudly claim to be rescued from the oblivion to which they have seemed doomed. In presenting to our view a people springing up by their own energies, in the midst of the wilderness, to independence, wealth and power, they remind us that we can more truly boast than did the Athenian; "*we sprang from the earth we inhabit.*" In identifying their infant straggles, and the transactions which mark their advance to maturity, with the land in which we live, and the scenes with which we are familiar, they people that land with the creations of the past, for the delight and instruction of the present. Associating these with the objects that are around us, then it is that we find, "**TONGUES IN TREES, BOOKS IN THE RUNNING BROOKS, AND SERMONS IN STONES.**" Such recollections

Utility of the recollection which belong to the history of her proprietary government.





carry with them all the enkindling effects of the Pagan theology, which made all nature rife with divinity or its ministers, and gave to every hill, or grove, or stream, its tutelary spirit. They animate every scene around us into a companion. They awaken new feelings and beget new associations to bind our affections to our own country. The experience of every individual attests this. We love to look upon the places of our infancy, and to loiter amidst the scenes of our boyish recollections. The house in which we dwelt, the ground on which we sported, the plans of youthful enterprise, the objects of early affection, the very cradle in which we were rocked, all bring with them soft and mellow remembrances upon which memory pauses for instruction and delight. All things else may have faded to our eyes under the withering influence of time, but to us these "*flourish in eternal green,*" and if they are also the records of improving intellect and expanding virtue and honor, how proudly do we recur to them, in manhood to incite us to further improvement, and in the decline of life to smooth the downward way. Why should it not be so with nations? To them the cradle of their liberties, the scenes of their infant struggles, the theatre of their youthful enterprises, and the history of their advancement to maturity, bring recollections equally full of pleasure and instruction. And yet the enquiry into these is but too often deemed *an idle curiosity*, and the explorer is sneeringly termed "*an Antiquarian.*"

There is a certain kind of *national pride* springing from a nation's history, which is essential to its dignity, and eminently useful in its advancement. 'Tis not the pride which springs upon the merit of the departed like the shoots of a certain fruit, where to use the language of another "*all that is fruit is under ground.*" It is the pride which rests upon *self respect*, springing from the consciousness that we have preserved in all its purity and integrity the character transmitted to us by our ancestors, and inspiring us to a noble emulation of them by striving to give fresh lustre to the legacy. All who have observed the workings of such a feeling upon individuals and upon nations, have seen how it has animated them to deeds worthy of their sires. In ranging through the history of the most illustrious nations of ancient and modern times, and in tracing the causes of the achievements which have given them renown,

General effect of  
a nation's history  
upon its character.





we find this proper national pride every where conspicuous. Whatever has illustrated and adorned the nation, becomes interwoven with the national character; and the individuals of the nations, to a certain degree, feel and move as if they were clothed with that character. The bright examples of the past are before them, and under the recollections which belong to these, they act as if the spirits of their forefathers were hovering around them to behold their deeds. In moments of exigency they feel as he of old, when he exclaimed, "*I am a Roman citizen*:" and when they cease to feel thus, and the national character ceases to be respected and cherished, from that instant the national decline commences.

With such proofs of the efficacy of national recollections in purifying and advancing a nation's character, we see at once the importance of treasuring up and preserving all those portions of her history, which develop the origin of her free and cherished institutions, and exhibit the causes of her advancement to wealth and power. These constitute her experience, by consulting which, and gathering from it the lessons of which it is fruitful, she may learn to avoid the errors whilst she follows the wise examples of the past. Then indeed history becomes: "*philosophy teaching by example*." To rescue from oblivion any facts connected with her history, which elevate her character, or mark her progress in the true principles of government, should therefore be the first effort of a nation, if she desires to sustain that character, or to give perpetuity to her institutions resting upon those principles. Such facts carry with them illustrations of public virtue and liberty, teaching by examples of all others the most persuasive, the examples of those whose honor is our boast. Interesting and instructive as such portions of a nation's history in general are, they are eminently so with reference to that of these United States. United under one government which is intended to preserve the unity of the nation for all national purposes, whilst it at the same time preserves the free and independent existence and operation of the several state governments for all state purposes, the people of these United States, by this happy adaptation of the confederated system to the republics of the union, have accomplished, and carried into successful operation, a form of government which

Preservation of  
its history a  
part of its nation-  
al duties.

Peculiar utility of  
the colonial his-  
tory of these Uni-  
ted States in illus-  
trating the origin  
and determining  
the proper char-  
acter of our Fed-  
eral Government.



has outstripped even the speculations of the political philosophy of former days. The happy combination of checks and balances, by which the several state governments are made to revolve in harmony around the national government, and the whole around the common welfare, has commanded the admiration of the world. By these concentric systems of government, simple in the midst of all their seeming complexity, and uniform in their purposes and results in the midst of all their diversified movements, each State commands for itself the protection of the whole, whilst it still retains for its internal administration its entirety and independence and the power to maintain them. Alike most of the inventions or institutions which excite our wonder, this government was the creature of circumstances. It did not, like Minerva, spring full grown from the brain of some philosopher or scheming politician. It was not a system formed in the closet upon mere abstract speculations about government, and intended to bend, and adapt to its theories, the character and condition of the people for whom it was framed. It sprang from the wants and necessities of the moment, and it took its features and complexion from the character and exigencies of the state governments at the time of its adoption. These gave it being: and an intimate acquaintance with these is necessary, both to give us an insight into the origin of our present federal government, and to furnish us with the principles by which it is to be construed and applied. The system of confederation, which preceded it, and under which the States achieved their independence, had paved the way to its adoption. Although the present constitution came to heal the defects of that system, yet the provisions and practical operation of the latter had familiarized the people to the necessity and advantages of an union of the States, had indicated the true purposes and extent of that union, and had taught the proper mode of accomplishing it without affecting the integrity of the States. The history of the old confederation is therefore the history of the present constitution; and that confederation was adopted by distinct and independent colonies in their common struggle for freedom. Those colonies were planted at different periods, and under different auspices. They were established, and grew up; under forms of government very various and in some instances essentially different. They were seated in different





sections of a widely extended country, possessing very different resources, which at the same time rendered the pursuits and occupations of these colonies very various and peculiar. This diversity in the institutions and employments of the several colonies, impressed upon the inhabitants of each a peculiar character, which took its fashion from the former. With these diversities, so well calculated to impart different notions of political rights, to give different inclinations of feeling towards the mother country, and to obstruct the adoption of a common government, we naturally ask "whence it was, that at one and the same moment, under the same claim of right and sense of duty, and with the same fearless spirit, they rose as one man against the oppressions of the mother country, and combined themselves for their common defence under one government, with as much ease and harmony as if union had always been familiar to them." The answer is to be found only in the history of the colonies. In the causes which led to their establishment, in their progress through all the privations and dangers of settlements remote from the parent and cast upon their own energies for protection and advancement, and in the general course and conduct of that parent towards them, without reference to their distinctions, is found the key to our union. Through a long period of colonial existence, they were trained to freedom and familiarised to union by circumstances. By the force of these, they were fitted for the government before it came: and hence, when it came, it sat lightly and familiarly upon them: and their conduct, in the first moments of its adoption, was characterised by none of that spirit of anarchy and licentiousness, which often marks the first moment of actual emancipation. Thus identified, as the histories of these colonies are, with that of our liberties and our government, as well as associated with our proudest recollections, to us and to our posterity they ought to carry an interest "*beyond Grecian or Roman story*," which should put to blush the sickly affectation for foreign models.

The limited nature and objects of the present work, so far as they relate to the History of the State of Maryland, have already been disclosed. Pursuing these in the view which  
 Objects of this Chapter. we are about to take of the proprietary government, we shall, in this chapter, examine the general nature of that government, and its prominent features and tendencies, as established





by the charter of Maryland, or as developed or modified by its actual operation, before we enter into the history of the condition and transactions of the province.

The government of Maryland, as established by its charter, was called "*a proprietary government*," in contradistinction to

The three general forms of colonial government established within the English colonies of North America.

the other two general classes of colonial governments, known by the distinctive appellations of "*charter governments*," and "*royal governments*."

These were the three general forms of colonial government existing amongst the English colonies of North America. There were, of course, peculiarities in the application of these forms to each colony: and the same form, as applied to different colonies, was more or less favorable to the liberties of the colonists. Yet the general features belonging to each of these three classes, however differently they might be applied, indicated a manifest distinction in point of benefit and privilege to the colonists. The royal governments were so called, because the colonies subject to them were under the immediate rule and administration of the crown: and depending, as these colonies did, not only for the appointment and dispositions of their rulers, but also, at some times, for the very security and continuance of the form of government under which they lived, solely upon the will of the crown, this form of colonial government was therefore always esteemed the least favorable to the people. Nor was the experience of the colonies calculated to change their impressions as to the tendencies of this form: for the royal administration was generally characterized by misrule and rapacity on the part of the governors, and by a steady and unremitting opposition to the colonial interests and liberties whenever these came into conflict with the designs of the crown. The charter governments proper were those, in which the internal administration was entirely in the hands of the colonists themselves. The charters of Rhode-Island and Connecticut are specimens of the pure charter government. They carried with them powers of self-government and internal regulation, which rendered them actual democracies. The charter government of Massachusetts, especially as modified by its charter of 1691, was of a more mixed character: yet it belongs properly to this class. Its supreme executive power was administered by a governor appointed by the



crown, who had also a veto upon its laws. The legislative power was in the hands of the people: and they had a further check upon the governor in the executive council, which was elected by the assembly. The charter governments were therefore always regarded as the most favorable in point of political privilege and power; because they had all the sanction and security for their continuance, which a charter from the crown could give them; and because the forms of government so secured, were either such as had been previously adopted and acted under by the colonists themselves, or were framed in conformity to their own wishes and suggestions. Such were the charters of the New England settlements generally: and this their character, familiarising those subject to them to all the rights of self-government and the duties of self-dependance, acquainting them by actual enjoyment with the benefits of a free government, and inspiring them with a freeman's spirit to maintain it, informs us, why it was, that New England was the cradle of American liberties, and that in all the contests with the crown for the general rights of the colonies, she was amongst the first in the onset, and the last in the retreat.

The proprietary governments were those, in which the charter granting territory, conferred upon the grantees, the jurisdiction over the territory granted, and the right of governing the people settled within it: and they were therefore of a mixed nature, blending some of the advantages of the pure charter governments with some of the disadvantages of the royal governments. They had the security of the former against the aggressions of the crown: but, as in the latter, the government emanated from a power distinct from, and independent of, the people subject to it. Some of these proprietary charters of the more favourable kind, secured to the colonists a participation in the government, which extended to a full and free share in the legislation of the colony, and to exemption from all taxes and impositions not levied by their assent; and when this was their character, they were almost as beneficial in their operation as the charter governments, and were more secure. The government under these charters being in the proprietary, the crown had no concern with the internal administration of the colony; and did not necessarily become a party to the contests between the proprietary and the

Feeler advantages of the most favorable forms of proprietary government.





people, about their respective rights and interests in that administration. It was not identified with the rule of the proprietary; as it was with that of its governors in the royal governments. The rights of the proprietary were entirely distinct from those of the crown, and did not necessarily involve the interests of the latter. On the other hand the jealousy of the crown was always excited against the proprietary powers and prerogatives, when they acquired rank and consequence from the growing wealth and population of the colonies over which they were exercised. As branches of royalty, which detached from the crown, and placed beyond its reach, the control of the government and revenue of the colony, they were, at some periods, looked upon with scarcely less aversion than the rights secured by the charter governments: and the government of England would, at times, have been willing to enlarge the privileges of the people as against the proprietary, that they might become instruments in the subversion of the powers of the latter, as those of the commons of England had been, in the hands of the king at an earlier day, for the prostration of the overweening arrogance and power of the barons. The attempts made to subvert these governments generally, to which we shall hereafter advert, however disguised, were but the offspring of this jealousy. Hence the contests connected with the internal administration of these governments, were, in general, conducted entirely between the people and the proprietary: and the influence and power of the crown were not brought to bear upon the interests and liberties of the people, except when they were supposed to entrench upon the eminent dominion and reserved rights of the mother country, or to conflict with the colonial dependence which these entailed.

The charter of Maryland exhibits to us the most favorable form of proprietary government. The privileges which it conferred upon the colonists, and its benignant provisions for the security of their rights and liberties, account to us at once for its continuance until the revolution, for the high estimation in which it was always held by the people, and the care and anxiety with which they clung to it when its existence was endangered. It was one of the earliest charters emanating from the English crown, and surviving the general wreck of the proprietary governments; although suspend-

The proprietary government of Maryland of the most favorable form.





ed at two periods for a considerable time, it held on its existence until the American revolution, when of all the proprietary governments which were created before or after it, there existed with it none but that of Pennsylvania. The similar governments established by the charters to the London and Plymouth Companies, were of short duration. That of Virginia was extinguished in 1624, before the grant of the charter of Maryland: and the Plymouth charter was surrendered in 1635. The proprietary governments subsequently established, with the exception of that of Pennsylvania, had but a short career, and that characterised by continual dissensions between the people and the proprietaries, or amongst the proprietaries themselves, which either led to a voluntary surrender of their charters by the latter, or to the revocation of them by the crown as productive of nothing but discord and misrule.

The charter of Maryland was in a great measure free from the elements of strife, which entered into most of the other proprietary governments, and which commencing to operate with their first organization soon occasioned their downfall. Under the former the grant was made but to a single proprietary, whilst in the latter there were several grantees; and in some instances, as in the grant to the London and Plymouth Companies, they were very numerous. The advantages of the former over the latter in this respect are evident. When the ownership and government were deposited in one hand, there was generally an unity of purpose and action, and a freedom from all those dissensions which ever arise when common and undivided rights and interests are to be administered by several proprietors. In such cases as the latter, the views of the several proprietors will differ: and each will endeavor, not only to give effect to his own views, but also to administer the common interests with a view to his peculiar benefit. This was not only the tendency, but also the actual experience of these governments, when allotted to several proprietors; and this result is nowhere more conspicuous than in the short career of the proprietary government of New Jersey. And although the harmony and unity of purpose incident to such governments, having but a single proprietary at their head, might seem to have facilitated, and to have given a steadiness and energy to their designs

Advantages resulting from the grant of Maryland to a single proprietary.



upon the liberties of those subject to them; yet when the proprietary governments were administered with the spirit of rapacity and misrule, it was always found, that the people were more oppressed by them when they were under the direction of several proprietaries. In their operation, the force of the old maxim, "*that one tyrant is better than many,*" was felt in all its truth.

The governments of Maryland and Pennsylvania, with all their imperfections, were yet singularly free, mild, and beneficent in their operation, when contrasted with the other proprietary governments. Much of this was, no doubt, due to the liberal views and benevolent purposes of their founders, and to the cautions and securities against oppression embodied in their charters: but some of it is properly attributable to the consideration that they were always vested in one hand or in one family. These provinces becoming thus the patrimony of these families, their honor and interests were identified with those of their proprietaries. The proprietaries stood to them in the relation of a "*pater-familias,*" and could not but feel interested in the growth and prosperity of their respective provinces, which were not only to illustrate and perpetuate their names, but also to swell the consequence and wealth of their families. The same feeling did not and could not exist to the same degree, where there were several co-proprietors of different families. Their views were not only different, but they were also more circumscribed by their immediate wants and interests; and they did not feel and act for posterity, under the same generous pride which animated those, who held their province as exclusively the patrimony of their families, and upon whose name and character its wealth and prosperity were to be reflected.

The history of these governments sustains these views. For the contrast, it is not necessary to go back to the administration of the proprietary government of Virginia, under the London Company, when, it may be said, the principles of colonial government were but little understood. Those of New Jersey and of Carolina, which were erected after that of Maryland, and but shortly before the grant to Penn, and which were distinguished from the grants of Pennsylvania and Maryland in being granted to several co-proprietors, were characterised by dissensions amongst the proprietors, and by an

General fate of the proprietary governments of a different description.





administration at war with the feelings of the people and the true and permanent interests of the colonies. The unfortunate tendencies of such a short-sighted policy, as to the interests of all concerned, were soon followed by correspondent results. The proprietary charter of New Jersey was surrendered to the crown as early as 1702; and that of Carolina, after struggling through a proprietary existence of about half a century, which was marked by continual outrage and oppression on the part of the proprietors, and by general, constant, and increasing dissatisfaction amongst the colonists, was at length formally repudiated and shaken off by the latter, and the colony, by its voluntary act, placed under the immediate government of the crown.

Whilst therefore the charter of Maryland, from the manner of its grant, tended to promote the proper administration of its government, and the permanent interests and prosperity of the colony; its comparatively liberal provisions in favor of the colonists were admirably calculated to second this tendency. This will be apparent from the view of its general features, as illustrated and modified in the progress of the government. The legislative power of the province, under the charter, extended generally to all the objects of legislation within it, subject only to the restriction: "That the laws enacted should be consonant to reason and not repugnant nor contrary to  
Extent and distribution of the legislative power under the charter of Maryland. but (as far as conveniently might be) agreeable to the laws, statutes, customs and rights of the kingdom of England:" and to all persons being within the limits of the province or under its government. The laws were to be enacted, by the proprietary, "*by and with the advice, assent and approbation of the majority of the freemen of the province or of their delegates or deputies.*" The participation of the people in the legislation of the province being thus secured, the assemblage of them for the purpose of legislation, was left under the charter to be regulated, as to its time and manner, exclusively by the proprietary. As soon as the government was organized, and an assembly of the freemen convened, differences arose in the construction of the charter, as to the relative rights of the proprietary and the people. The proprietary seems to have held, that the power of originating and propounding laws resided exclusively with him; and that the assembly had nothing more than the simple power of assent or dissent.





Their participation in legislation, as then expounded by him, was analogous to that of the senate under our present constitution, in the passage of money bills. Acting under these views he rejected in mass the laws which were passed at the session of the first assembly held in the province; and as substitutes for them, he caused to be prepared and transmitted from England, a body of laws for adoption by the next assembly. The colonists, on the other hand, considered their power "*of advising, assenting to, and approving laws,*" as conferring upon them equal and co-ordinate rights with the proprietary; and hence, at the next session of assembly, convened on the 25th January, 1637 (old style,) they returned the compliment, by rejecting in mass the laws which he had propounded. The freemen were successful in their opposition to the exclusive right claimed by the proprietary; for from that period their right to originate laws does not appear to have been seriously contested. But notwithstanding this concession, the proprietary, in the early years of the province, still claimed, and occasionally exercised similar rights, as a co-ordinate branch of the legislature; but these occasions were very rare, and in the ordinary course of the legislation of the province, his powers were in practice limited to his veto upon the acts of the assembly. Throughout the proprietary government, the full veto power was always retained in the person of the proprietary. The commissions and instructions to the governors of the province, gave them, in general, the right of assenting to or rejecting laws; but this assent, when given, never concluded the proprietary, except in cases where he had specially authorised the governor to assent in his name to a particular law. The only effect of the governor's assent was to give efficacy to the laws so assented to, until the proprietary's dissent was declared, and when this was declared, they ceased to operate. The governor had the general power of giving to laws this partially operative assent, subject only to such modifications and restrictions as were specially imposed by his commission and instructions. The limitations, which were from time to time imposed by these, will appear, when we come to treat of the particular organization of the provincial legislature. The general views here given suffice to shew the actual distribution of the legislative power, and the ordinary modes in which it was exercised.



The charter having referred to the proprietary the exclusive right to convene assemblies, and to determine the time and manner of convention, the power of convening, adjourning, proroguing, and dissolving the assemblies at his pleasure, always belonged to the proprietary, and was delegated to, and exercised by the governors of the province, throughout the whole period of the government. This general right carried with it another power, the improper exercise of which might have been attended with very dangerous consequences to the co-ordinate rights of the people. The proprietary under it possessed, and for a long time exercised, the exclusive right of determining the manner in which the assembly should be constituted. The warrants for convening the assemblies issued by the governors during this period, determined whether they should be convened in person or by deputies; or, if by deputies, the number of deputies to which they should be entitled, and the manner in which these should be elected. If vacancies occurred, the propriety and mode of filling them up were determined by the same discretion. The people's participation in legislation might have been rendered of but little avail by this unlimited discretion, on the part of the proprietary and his governors, to regulate the manner in which the assembly should be constituted. But the usage of the governors, and the legislation of the province, soon restrained this discretion, or corrected its tendencies. The operation of these upon the particular organization of the legislature, at every period of the proprietary government, will appear hereafter. For the purposes of this general view it is sufficient to remark, that from the convention of the first assembly of the province until the government passed into the hands of Cromwell's commissioners, there was no determinate and uniform mode of convening assemblies. The freemen were summoned to attend, sometimes in person or by proxy, sometimes in person or by proxy or by deputies, sometimes by delegates or deputies only, and sometimes by a general direction to attend without prescribing the mode of appearance. These were the various modes of convening the freemen generally; but throughout this period there were always writs of summons, which were specially directed, in the discretion of the governor, to the councillors and other high officers of the province, and also on some

Control of the proprietary over the form and existence of the Assemblies and how modified.





occasions to other persons of trust and distinction. Yet although there was no uniform mode of convening assemblies generally, the manner adopted for the formation of any particular assembly, was uniform, and impartial in its operation. The particular form adopted for the organization of any assembly, applied to the inhabitants of the province generally, who were thus placed upon an equal footing in point of privilege. After the restoration of the government to the proprietary, in 1658, by the protector's commissioners, the right of appearing in person or by proxy wholly ceased. From that period the distinct organization, and independent existence, of the Upper and Lower Houses of Assembly, which had been established *pro hac vice* at the session of 1650, became permanent: and under this permanent establishment, which endured by usage or law until the American revolution, the Upper House consisted of the councillors to the governor, and the Lower House of delegates, elected by the people of the several counties. Under this system of county representation for the Lower House, which superseded the old system of representation by hundreds, the manner of election, and the number of delegates to be elected by each county, continued to be regulated from 1658 until 1681, by the warrants of election issued for each assembly. But throughout this period, with a single exception, the warrants uniformly authorised each county to elect two, three, or four delegates; and after such election notified to the governor, it was usual to summon the persons elected by special writ. The proprietary's ordinance of 6th September, 1681, reduced the number of delegates to two for each county; and prescribed a permanent and uniform rule as to the qualification of the voters and the manner of election. The proprietary having been divested of the government of the province in 1689, (which shortly afterwards fell directly under the immediate administration of the crown, as other royal governments) the organization of the Lower House was settled by the act of 1692, chap. 76, and continued to be regulated by law, until the adoption of our present government, by the succeeding acts of 1704, chap. 35, 1708, chap. 5th, 1715, chap. 42, and 1716, chap. 11. Under these acts, (which all agree in this respect,) the same equal and uniform right of county representation, which now exists, was permanently established. Each county was entitled





to elect four delegates: and the qualifications of voters and delegates were established by a permanent and uniform rule.

From this summary view of the organization of the provincial legislature, it will appear, that their right under the charter to participate in legislation, was at all times enjoyed by the inhabitants of the province: and that the several systems of representation, which prevailed in the colony, were as full of liberty and privilege to the subject, as those of the mother country, or of the greater part of the colonies. They had indeed their alloy. The existence of the Upper House as a co-ordinate branch of the legislature, constituted one of their most objectionable features. It had all the disadvantages without the advantages of the House of Peers. The latter, if it is independent of the people, is also independent of the crown: but the Upper House of the province, consisting of councillors, appointed by the proprietary or under his commissions, and dependent for their offices upon his pleasure, was, from its very organization, an aristocracy of the worst possible kind, an aristocracy wholly independent of and irresponsible to the people, and at the same time the mere creature and dependant of the proprietary. With a constitution so antagonist to public liberty, it is truly surprising that the transactions of this House should have displayed as much regard for the rights and liberties of the colonists, as they frequently did. The power to convene, prorogue, or dissolve the assemblies at pleasure, had also a tendency to diminish their independence; but the abuse of this power for the purpose of checking or putting down any of the favorite measures of the people, was always followed by consequences which rendered it harmless. Instead of driving the people from the ground which they had taken, its effect was only to rally them more effectually and firmly for the accomplishment of their views, to which they generally succeeded in bending the will of the proprietary, or his governor. The legislative records of Maryland furnish us with several instances, in which this executive right appears to have been used for this purpose; but the people's firmness generally frustrated this design. The executive veto sustained, by its control over the existence of the assemblies, and by the subserviency of the Upper House, at times militated against the views and interests of the colonists at large; but it was never enabled to prostrate these

General results  
of the legislative  
power.



through the instrumentality of legislation. The constitution of the Lower House always interposed an effectual bar to the legislative oppression of the province. In it the people of the province always found a faithful guardian and ready asserter of their rights.

It is somewhat remarkable that throughout the whole colonial existence of Maryland, the history of its legislation does not exhibit a single instance of treacherous or timid abandonment, by this House, of the rights and interests of the colony. Pursuing, in the general tenor of their conduct, the happy medium between the arrogance of power and the servility of submission, they were the vestal preservers of liberty in every age of the colony. The consequence was, that this uniform yet temperate adherence to their rights, even whilst it encountered the resistance, seldom provoked the serious indignation of the proprietary: and the good correspondence between the government and the people being thus preserved, the colonial history of Maryland exhibits one of the finest specimens of colonial administration. Alike the other colonies, it had its moments of discontent, its internal dissensions, and even its revolutions, which for a time prostrated the proprietary dominion: yet these were of but short duration, when compared with the long intervals of tranquillity and contented prosperity. The legislative acts and addresses of the colony, at almost every period of its existence, abound with expressions of their attachment to the proprietary government, and with grateful acknowledgments for the gentleness of its sway, and its constant endeavors to promote their interests. When separated from it, they soon looked back to it and sighed for its restoration: and its return was received with every demonstration of general joy.

The proprietary's power to pass ordinances without the concurrence of the assembly, appears to have been regarded by the charter, as a branch of the legislative power. The recitals, which precede its grant, seem to have contemplated the exercise of it, as an *ad interim* legislative power: but the restrictions imposed upon it by the charter and the usages of the colony, gave it a very harmless and limited operation. Under it, the proprietary was authorised personally, or through his officers, "to make and constitute wholesome ordi-

Nature of the  
proprietary power  
to pass ordi-  
nances.





nances from time to time, (to be kept and observed within the province,) as well for the conservation of the peace as for the better government of the inhabitants, to be publicly notified to all who were to be affected by them: provided that these ordinances were consonant to reason and not repugnant nor contrary to but (as far as conveniently might be) agreeable to the laws, statutes or rights of the kingdom of England, and that they did not in any sort extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattles."

Thus restricted, it was nothing more than a mere police-power, stripped of the means of oppression to the subject, which never could usurp the proper place or rank of legislation, and the exercise of it within the province was, in general, conformable to this, its restricted nature. It was, on one or two occasions, exercised as an embargo power: and it was frequently resorted to, in establishing or remodelling the offices of the province, under the general and exclusive charter-right of the proprietary, to create these and to prescribe their duties. But whenever the ordinances passed beyond this their legitimate sphere of action, and attempted to attach fees and emoluments to these offices, or to determine their *quantum*, they were always resisted by the colony as manifest usurpations. The only material or serious controversy which ever arose in the province about the exercise of this ordinance power, related to proclamations of the latter kind. The fees of the officers were generally regulated by acts of assembly: and it was always held by the Lower House of Assembly, that this was the only legitimate mode in which they could be given. On two occasions the *fee-bill*, as it was termed, was suffered to expire; and during the intervals between the expiration of the old law, and the enactment of a new fee bill, the governor established the fees by proclamation, adopting as his general guide the rate of fees as established by the expired act. In both of these instances the ordinance power was used merely as an *ad interim* power. The acts of assembly regulating fees had ceased: and without its interposition, the officers would have been left without any fixed compensation for their services. The tendency of this state of things was, to throw open the door to extortion or corrupt practices on the part of the officer: and the

Extent of its actual exercise.





proclamations, in correcting this, at the same time facilitated the transaction of business in the offices. They were not intended to usurp the place of legislation: for they were only to endure until a new act was passed. Yet with all these palliating circumstances to excuse, if not to sustain these proclamations, they were always regarded and resisted by the Lower House as acts of gross usurpation and oppression. They were held not only to transcend the ordinance power as defined by the charter, but also to violate the exemption of the colonists from all taxes and impositions whatsoever, except those which were fixed by act of assembly. This exemption had been declared and confirmed by the early act of 1650, chap. 25; and was regarded as a right too sacred, to be drawn into question, or indirectly violated, even for beneficial purposes. The last of these proclamations, and that which gave rise to the most serious controversy, and to the most thorough examination of the power, was issued in 1770; and the history of it, as well of that of 1733, which preceded it, is intimately connected with that of the revolutionary struggles of the province, and will be considered in conjunction with it. The discussions which grew out of it, were ably conducted on both sides; and they led to the full examination of the previous exercise of the ordinance power in general. The result of the investigation was, that it was found to have had in practice only the limited operation which we have assigned to it: and that investigation is here adverted to, only for the purpose of illustrating the general remark, "that the ordinance power, under the charter, in its general exercise, conformed to its charter-restrictions, and was not in fact exercised in the colony, either to subvert or usurp the place of legislation: and that Maryland, throughout her colonial existence, was not subject to, nor operated upon, by any legislative power in the province, except that of the charter, in which her freemen participated, and by which they were protected."

The Executive powers, conferred by the charter upon the proprietary, were ample and efficient. They carried with them all the jurisdiction that was compatible with the colonial dependence of the province, and was necessary for its security and internal administration. Besides the rights, powers, and privileges specially granted, the proprietary was invested by the 4th section of the charter "with all

The executive powers incident to the proprietary government.



the rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, royal rights, and temporal franchises whatsoever, which had ever been held or exercised by any bishop of Durham within the bishoprick or county palatine of Durham in England."

The origin, nature, and extent of these Palatinate Jurisdictions and privileges, as formerly exercised within the bishoprick of

Origin nature & extent of the palatinate jurisdiction attached to it. Durham and the counties palatine of Chester and Lancaster, have been fully examined and illustrated in other works. It will be sufficient to remark, that

these peculiar jurisdictions were erected in these counties of England, at a period when they were border counties, and, as such, were relied upon to guard the frontiers. They were continually exposed to predatory incursions from Scotland or Wales, which in those days of baronial strength and turbulence, were very frequent, easily concerted, and speedily accomplished. At that period, when garrisoned fortifications and standing armies did not make a part of the strength of the nation, such border incursions could gather head, and discharge their whole force upon the bordering counties, before the aid of the kingdom could be effectually called in. The crown was therefore compelled to rely, for the protection of the frontiers, upon the power and energies of the borderers: and as their situation required constant vigilance and attendance at home, and the existence and presence amongst them of an authority adequate to the exigencies of the moment, these palatinate jurisdictions were created to meet that necessity. The earl of Chester, the duke of Lancaster, and the bishop of Durham, who were at the head of these palatinate governments, were therefore invested with powers and prerogatives which fell little short of those of royalty itself. They appointed all officers within the counties. The courts of justice were emphatically their courts: for all process which was issued out of them, ran in their names, instead of that of the king's; and all offences were held and charged in indictments, as offences against them, and not against the king. They had power to pardon all offences whatsoever committed within their respective jurisdictions. The lands lying within their provinces, were deemed to be holden of them; and they were therefore entitled to escheats, wardships, and the other fruits of the feudal





tenures, which fell to the lord of the fee. They had the right of levying forces and waging war for the defence of their provinces, and of pursuing invaders even beyond the limits of the kingdom. (1) By some of the old writers they were said to have "*full royal power*" in all respects: but these general expressions must be received "*sub modo*." Their powers were indeed as ample as those of royalty, for all the purposes of their establishment: yet they did not carry with them sovereignty or its peculiar prerogatives. The eminent dominion and control of the crown prevailed, as to the rights of war and peace, as fully over these counties as over the other portions of the kingdom. The allegiance of their inhabitants was due to the crown, and not to the head of the palatinate government: and it seems to be the better opinion, that although these palatinate chiefs were permitted, without waiting for the direction or sanction of the crown, to carry on a mere defensive war for the protection of the borders; yet they had not the general right of declaring war or concluding peace. Such a right, existing independently of the crown, might have brought them into a direct conflict with its sovereignty.

The objects and necessity of this extensive grant of power and jurisdiction to the proprietary of Maryland, are easily perceived.

Policy of the English government in its extensive grants of jurisdiction to the colonial government.

The policy of the English government at that day, in the establishment of its colonies, was uniformly to leave the conduct and settlement of the colonies to individual enterprise and resources. It gave no boon but the privilege of occupying and peopling the wilderness: and granting this with the reservation of its sovereignty, it cast the enterprising individuals or corporations to whom the grants were made, entirely upon their own means and energies for the establishment and sustension of their settlements. If they succeeded, its dominions were enlarged, new channels opened for its commerce, and its revenue increased. If they failed, the crown lost nothing but an empty grant of kingdoms it had never held, and powers it had never enjoyed. In accordance with this neutral policy as to schemes of colonization, it became necessary to delegate to the grantees all the powers of government which were

(1) For the nature and extent of these *palatinate jurisdictions*, see 6th Viners' Abridgment, 573 to 583, 2d Bacon, 188 to 192, and the case of Russell's lessee vs. Baker, in which the extent of these jurisdictions was much discussed.





requisite for their protection or the internal administration of their colonies. Hence arose all the various forms of charter and proprietary governments, which, in their origin, were in fact intended to relieve the crown from the cares and responsibilities incident to the administration of an infant settlement: and which became objects of jealousy to it, only when they had reared their settlements to wealth and power. Whilst they were contending against the dangers and difficulties of their establishment, the English government, with all the indifference of epicurean philosophy, looked calmly and unconcernedly upon their situation, and left them to their struggles. When they had surmounted these, then it was she remembered they were her children, and then only to make them know and respect the authority of a parent. Her desire to rule and protect the colonies, and to substitute her own immediate administration for that of their peculiar colonial governments, increased precisely in proportion to the ability of the colonies to rule and protect themselves.

Acquainted with this her policy and the sources of her jealousy towards the colonial governments, we are but little surprised at the extensive grants of power and jurisdiction conferred by the early charters; and still less so as to those given by the charter of Maryland, when we recur to the circumstances under which that charter was granted. These have already been unfolded. It was a grant to a favorite, by a monarch whose partialities were as unbounded as they were capricious: and there is reason to believe, that it was framed under the dictation of that favorite. Thus indulged, lord Baltimore adopted, as the general model for his proprietaryship, the palatinate jurisdictions in their original form and extent; which approached more nearly to sovereignty than any other of the subordinate governments known to the laws of England. The powers originally incident to these in the border counties, were soon found to be too extensive to be reposed with safety in the hands of the subject; and they were therefore much reduced and restricted, at the period when this charter was granted: but to the proprietary of Maryland they were granted in all the extent in which they ever had existed. The charter did not stop here. It contains special grants of power and privilege, which not only cover the ground of the general grant of palatinate juris-

The jurisdiction conferred upon the proprietary of Maryland peculiarly extensive.



diction, but extend considerably beyond it, and render the grant of Maryland the most ample and sovereign in its character that ever emanated from the English crown. The power to call assemblies and enact laws by their assent, and the extensive operation given to the legislation of the province, did not belong to the palatinate governments: and they constitute a very peculiar feature of this charter, when we look at the spirit of the crown, and the prevailing temper amongst the nobles, at the period when it was granted. The proprietary might, doubtless, have as easily obtained a grant of legislative power, to be exercised solely by himself, and quite as extensive: and the admission of the colonists to participation in it, at once evinces his sagacity, and reflects lustre on his character. It was this exalted privilege, which endeared his government to the people of Maryland: and had they not possessed it, his dominion would soon have been marked by the same arbitrary character, and have shared the same fate with that of the London company. There was another very peculiar feature in the grant of legislative power. The sovereignty of the mother country was reserved in terms, but the proprietary was under no obligation to transmit the laws of the province to the king, for allowance or disallowance. Thus the vigilance of the crown, in guarding its own prerogatives against silent and gradual encroachments, was in a great measure excluded; and the reservation, except in cases of direct conflict, became a mere "*brutum fulmen*." In examining the special grants of executive privilege and power, we shall in general find the same latitude. Classified according to their objects, these were either *civil, military, ecclesiastical or commercial*.

As the supreme executive under this government, the proprietary had the sole right of creating the offices of the province, and determining their form and functions, and of appointing all judges, justices, and other officers whatsoever within it. He had the power to establish courts, and determine their jurisdiction and manner of proceeding; and all the process from these courts ran in his name and not in that of the king. These sole powers the proprietary possessed, not only as palatinate powers, but also under the express grants of the seventh section of the charter: and although competent of himself to their exercise, he might, and in

The mere civil powers: and firstly, those relating to the creation of the offices, and the appointment of the officers of the province.





some respects did submit them, to the regulations and restrictions of the laws of the province. The courts were always held, and the process always ran in his name: and the organization of the courts was in general determined by the commissions of the proprietary or his governors. But the time, place, and manner of holding the courts, the limits of their respective jurisdictions, and the manner of proceeding in them, were the constant subjects of legislation. The general power of appointing the officers of the province, was, however, one of such consequence, that it was retained by the proprietary as his sole power, in full vigor and nearly all its original extent, throughout the proprietary government. It was retained not only as to all the State offices, but also all the county offices; except one or two of a very inferior nature: and the exercise of it was, with a few exceptions, confided to the governors of the province. (2) Under this unlimit-

(2) Upon the establishment of the royal government, the appointing power of the proprietary, in all its plenitude, devolved upon the crown: and during the continuance of that government, some very salutary restrictions were imposed upon this hitherto unlimited power, by the act of December, 1704, *ch.* 92, entitled "An Act for the advancement of the natives and residents of the province." It rendered all persons incapable of holding or enjoying any office of profit or trust in the province, either in person, or by deputy, who had not resided in the province at least three years: and the only exceptions to this incapacity were, in the cases of persons holding offices by commission immediately from the crown, and of persons holding such offices at the time of the act passed. All officers of the crown within the province, having the power of appointing to any office within it, were required, without exception, to conform to this rule: and as persons holding offices by immediate commission from the crown were exempt from it, they were required, by this act, to reside in the province, and to exercise their offices in person, and not by deputy, in all cases where this was not specially dispensed with by the crown. The strict letter of this act relates exclusively to the exercise of the appointing power under the royal government: but being a high remedial statute, aimed at abuses equally likely to exist, and equally requiring correction under the proprietary government, its operation does not appear to have ceased with the royal government. By the equity of the statute, it applied as fully to the officers under the proprietary, as to officers under the crown: nor was it any invasion of the proprietary rights under the charter, as it did not apply to appointments coming directly from the proprietary, except in requiring residence in the province, and a personal exercise of these offices by those so appointed; and even these requisites might be dispensed with, by the special





ed power of appointment, the offices of the province were held at the pleasure of the proprietary: and herein consisted the greatest defect in the government. Its tendency was to render these officers the dependants and satellites of the proprietary or his governor, and to convert their offices, which were instituted for the benefit of the people, into so many weapons of offence against them, on all occasions of conflict with the government. The dependence which it entailed, was utterly incompatible with the exalted duties of the judiciary; and although less repugnant to the nature of the mere ministerial offices, it erred in rendering them solely responsible to those who appointed them, and were naturally inclined to sustain their acts, whatever they might be; and wholly irresponsible to those for whose benefit these offices existed, and upon whom their misdemeanors in office were to operate. Yet the tendencies of this dependant state were in a great degree counteracted by the control of the Assembly of the province over its revenues generally, and over the fees of office. The officers were principally sustained by fees and perquisites, the right to and quantum of which, were generally and properly regulated only by acts of Assembly. The proprietary's revenues arising from the province, except those accruing from the grant of lands and common law fines and forfeitures, were derived from the same source: and they were given to him and enjoyed by him for his personal emolument, and were not sufficient to enable him to endow the offices with salaries. The value of the offices to the incumbents, depended upon the fees of office attached to them by acts of Assembly. Those acts regulating fees, were not only subject to alteration or repeal, but they were also temporary, and passed for short periods; at the expiration of which they expired by their own limitation, if not sooner repealed, and could not be revived except by the assent of the Assembly. Thus the Assembly always retained its control over the fees of office, and its check upon the officers. The proprietary gave

Tendencies of this proprietary power: and how restrained and corrected.

permission of the proprietary. The provisions of this act merely imposed salutary restrictions upon the exercise of the appointing power by sub-officers, equally proper, and therefore equally applicable, under both governments: and so they were considered by Bacon, who has published them at large in his edition of the laws, as operative under the proprietary government.



offices, but the acts of the Assembly alone gave them value; and if it chose to reduce or withhold the fees, the incumbent might truly say,—“*You take my office, when you do take the fees whereby I live.*” Seeing this, we understand at once the constant and vigorous opposition of the Assembly to every attempt of the governor to establish these fees by proclamation. Their vehemence was fully justified, by the consideration of the dangerous consequences which might have flowed from the admission of this power, under any circumstances. If once sanctioned by the people even as an *interim power*, it would have been fatal to this policy. The governor would have assented to no future act, but would have continued to regulate the fees by proclamation; and thus the officers would have been rendered entirely independent of the people. The sagacity of the people perceived this, and hence their unyielding opposition.

The powers of erecting towns and cities, and conferring titles and dignities, fall properly under this head. Under the fourteenth article of the charter, the proprietary had the general power of erecting and incorporating towns into boroughs, and boroughs into cities, with such privileges and immunities as he might deem expedient. His power to confer dignities and titles of honor, which was given by the same article, was subject to the restriction that they should not be *such as were then used in England*; and this restriction rendered the power a mere nullity. Titles of honor, to carry with them any peculiar respect or consequence, without regard to the merits of the possessor, must be consecrated by their long association with ideas of wealth and privilege. New titles, given for the mere purpose of conferring honor, are generally as ridiculous as were those incorporated by Mr. Locke into the constitution of Carolina. The first proprietary, in some of his early instructions, appears to have cherished the design of conferring dignities as enduring personal distinctions; but fortunately for the colony, the design never was carried into effect. The existence of a *titled gentry* throughout the colonies, would have proved a serious obstacle to the accomplishment of their liberties. The great body of the aristocracy, which they formed, would always have been found on the side of prerogative, warring against the principles of republicanism. Distinction by title,

Idly. The powers of erecting towns and cities, and conferring dignities and titles of honor.





however it may in some rare instances be controlled by the virtue of its possessor, is the natural enemy of principles which know and respect no distinctions amongst freemen, except those of intrinsic merit.

Another important branch of the powers falling under this head, was the *pardoning power*. This power, as adly. The power to pardon offences. given by the seventh section of the charter, was commensurate with the proprietary government itself. Under that section, the proprietary was empowered to "remit and pardon all crimes and offences whatsoever against the laws of the province, whether before or after judgment passed;" but his power to pardon appears to have extended beyond this special grant. The offences which were committed within the counties palatine of England, were defined, and their punishment prescribed by the laws of England, although they were charged and proceeded against, as offences against the lord's palatine; and because of their general jurisdiction over all offences committed within their limits, the lord's palatine had also the power to pardon them, not excepting even treason. It would seem, therefore, that the proprietary had the power of pardoning all offences committed within the province, even if they arose under English statutes operating here, as well as if under the positive laws of the province, to which the seventh section, by its context, refers.

The military powers of this government, as defined by the charter, appear, as well as those of the palatinate government, to have been given solely for the purposes of defence. The proprietary was clothed with all the powers of a captain Military powers of the proprietary under the charter. general, in summoning and arraying for the defence of the province all its inhabitants, and in waging war against, and pursuing even beyond the limits of the province and taking captive all enemies invading or infesting it by land or sea. The captives taken, he was empowered either to put to death or otherwise to dispose of at his pleasure. He might also declare and exercise martial law, in all cases of rebellion, sudden tumult, or sedition in the province; and against all persons within the province, guilty of sedition, refusing to submit to his government, or to render military duty, deserting to the enemy, or otherwise offending against the rules and discipline of war.





The restrictions of the statutes of fugitives were also dispensed with, and the inhabitants of the province were authorised, under the assent and direction of the proprietary, to build and fortify castles, forts, and other places of strength within the province, either for their own or the public defence. Such was the *charter-extent* of the military powers incident to this government; and the palatinate powers appear not to have extended further. It was not consistent with their subordination to the kingdom of England, to extend these powers beyond the means and operations of defensive war. The unlimited rights of war and peace are the highest attributes of sovereignty; and the full exercise of them is compatible only with the supreme power. They made a part of the eminent dominion of the mother country, with which their full exercise by the colonies would manifestly have conflicted. The foreign relations of the parent country would thus have been placed at the mercy of the colonies. By declaring war against those with whom she was at peace, they would either have drawn her into the contest, or have entailed upon her the responsibility of their offensive measures; and by putting themselves in an attitude of peace as to those with whom she was at war, they would have withdrawn themselves from their allegiance. Their powers were therefore very properly limited to the protection of the province, and were given merely to meet a state of actual hostility to it, arising either from rebellion, invasion, or warlike array against it. Of this nature were the various acts from time to time passed for carrying on warlike expeditions against the Indians, which were always predicated upon some actual or expected hostilities on the part of the latter. These military powers, although conferred solely upon the proprietary, did not carry with them the right of raising the revenue necessary for their exercise. The Assembly alone held the purse strings of the provincial revenue. No subsidies, aids, customs, taxes or impositions of any kind, could be levied for any purpose whatsoever, upon the persons or property of the freemen of the province, without the consent and approbation of the General Assembly. (3) By their acts alone, could a revenue be raised from the province

Restrictions imposed upon these military powers by the legislation of the province.

(3) Act of 1650, chap. 25, confirmed amongst the perpetual laws by the Act of 1676, chap. 2d.



to defray the expenses of military expeditions. And besides this general dependance upon the province for the means of their exercise, these powers were subject to the restrictions imposed by the permanent act of 1650, chap. 26. (4) Under these, if war was waged by the proprietary or his governor, without the limits of the province, and without the approbation of the General Assembly, the freemen of the province could not be required to aid in the prosecution of it, either in their persons or by their property: and *martial law* could not be exercised within the province, "*except in time of camp or garrison, and only within such camp or garrison,*" i. e. in time of actual service, and upon those in actual service. The general *charter* power of the proprietary to call out and array the inhabitants of the province for its defence, was also, from a very early period, modified and regulated by Acts of Assembly, prescribing the manner of organizing, arming, and disciplining the militia. (5) The systems of internal defence, which were established by these acts, will hereafter be considered in conjunction with that which now prevails in the State. We are now only considering the purposes and manner of their establishment: and from the view which has been taken, it will be seen that the Assembly soon obtained over this, as well as over the other sole powers of the proprietary, a wholesome control which facilitated their proper exercise, and prevented their abuse.

General course  
of the English  
government as  
to the commerce  
of the American  
colonies.

The neutral policy of the English government, in reference to the establishment of her early colonies on this continent, is nowhere more conspicuous than in her conduct as to their commerce. The leading traits of that policy have already been described. It left to unassisted and individual enterprise, all the expense, hazard, and difficulty of establishing these colonies. It permitted them to grow up through all the perils and difficulties of their first settle-

(4) This act of 1650, chap. 26, was also confirmed amongst the perpetual laws, by the act of 1676, chap. 3d.

(5) The successive acts on this subject were the acts of 1661, chap. 8. 1676, chap. 8. 1678, chap. 2. 1681, chap. 1. 1692, chap. 83. 1699, chap. 47. 1704, chap. 87—and lastly, the act of 1715, chap. 43, which, with its supplements of 1722, chap. 15. 1733, chap. 7, and 1748, chap. 1, constituted the militia law of the province until the revolution.





ment, under its indifference and neglect. It extended its provident care to them, when they had wealth to be taxed, commerce to be monopolised, and power to be directed. Hence, the early charters, granted when colonization was an experiment, and the benefits of colonial commerce in embryo and scarcely a matter of calculation, are very lavish in their grants of commercial power and privilege. Several of these charters were sought and obtained solely for commercial purposes: and under all of them, the security and benefits of commerce were necessary to stimulate enterprise and invite emigration. It was necessary to establish and nurture their commerce in its infancy, by liberal grants of privilege: for unless so nurtured, there would be nothing upon which the exactions of the mother country could operate. There is, indeed, in this respect, a striking contrast between the beneficial provisions of the early charters, and the narrow, selfish and enslaving policy, subsequently adopted by the government of England, with reference to the commerce of these colonies. Her adulating writers, whose object was, or is, to depress our national character, by exalting her conduct towards these States when colonies, may remind us of the parental liberality of these early grants: but when we stand in view of this contrast, *we remember the kindness that fattens for the slaughter.*

The early policy of that government illustrated in the commercial privileges granted by the charter of Maryland.

The charter of Maryland was exalted above every other by its *commercial privileges and exemptions*. All commodities were permitted to be imported into the province, except such as were specially prohibited, upon payment of the ordinary customs. (6) The colonists were permitted to export from it all articles whatsoever, of its growth or produce, to any of the ports of England or Ireland, subject only to the customs and impositions paid in similar cases by the inhabitants of England: and if they did not deem it proper there to dispose of them, they might store them, and within one year computed from the time of unlading, they were permitted to relade and export them to any part of the English dominions, or of the dominions of any foreign power in amity with England, subject, as upon their import, only to the customs paid in similar cases by the people of England. (7) Full and absolute

(6) Charter of Maryland, art. 11.

(7) Charter, article 15.





power was given to the proprietary, to establish the ports of entry and discharge for the commerce of the province, and to invest them with such rights and privileges as he deemed expedient. The proprietary, by the assent of the colony, was permitted to impose customs upon the exports and imports of the province, and was entitled to the avails of those customs to the exclusion of the crown: and the kings of England, by the express covenant of the 20th article, were prohibited "from imposing or causing to be imposed, any impositions, customs, or other taxations, quotas or contributions whatsoever, upon the persons or property of the inhabitants being within the province; or upon any merchandise whatsoever within the province, or whilst being laden or unladen in its ports." (8)

Similar exemptions of the commerce of a colony were granted for short periods, by some of the other charters: but under this charter, the privilege was perpetual. It was manifestly intended to operate to the entire exclusion of the taxation of England

Peculiar nature and efficacy of the charter exemption of its commerce from the taxation of the English government.

from the province, and was afterwards found to be one of the most insuperable objections, in argument, to the exercise over Maryland of the power of internal taxation claimed by the British Parliament. It gave the inhabitants of this colony a peculiar claim to exemption beyond that of the other colonies, which they relied upon with great confidence in their opposition to the *stamp and tea taxes*. Mr. Chalmers, whose work was written for the express purpose of demonstrating that the parliament possessed this power, frankly admits that this exemption gave peculiar strength to the Maryland claim. At the same time he considers it as an exemption, which neither was intended to operate, nor could operate against the powers of parliament. His objection to this application of it rests upon the assumption, that the government of England, at the period when this charter was granted, was a limited monarchy, under which the king could neither strip parliament of its powers, nor rightfully exercise the power of taxation except by its consent: and that this exemption of the charter, was in fact nothing more than the principle asserted and maintained by the House of Commons against the royal preroga-

(8) Charter, articles 17 and 20.



tives in their petition of right in 1628. The revolution has answered his argument, and the reply to it would now be idle discussion. It would not be difficult to show that the limited monarchy, of which he speaks as existing for centuries, and as then only rescued from the grasp of prerogative, was before that period a mere *legal fiction*, scarcely known, and never respected in the operation of the government; and that as to the colonies, the power of the crown was supreme and uncontrolled. It granted charters with what privileges it pleased in derogation of the sovereignty of England; and its power to do this was not then questioned even by parliament. As to the colonies, it was then considered as the depositary of the sovereignty of England; and the parliament sat by in silence and saw it exercise that sovereignty or grant away portions of it at pleasure. The grantees under the charters regarded it as such, relied upon their privileges as the grants of the English government, and colonised their provinces under that reliance. Under such circumstances, the claim of parliament to jurisdiction, in direct opposition to the grants of the charter, had neither reason nor justice to sustain it: and if valid at all, it placed the whole charter at its mercy. Those, who vindicate the conduct of the English government, may make their choice of the alternatives. Either she did not possess the power, or her assumption of it, after the colonies had been planted and reared to maturity solely by individual means and enterprise and in reliance upon the privileges which the charter purported to convey, was an act of rank deception and injustice.

The colony of Maryland, *with all her peculiar claims*, soon shared the fate of the other colonies. Her commerce was left entirely to her own regulation, until it became sufficiently valuable to attract the grasp of England; and then it was taken into

guardianship. A system of monopoly was soon established, which endured until the American revolution. The full and final establishment of this system was reserved for the reign of Charles II. It began with the statute of 12th, Charles II. chap. 18, which limited the carriage of the imports or exports of the colonies to vessels belonging to and navigated by English subjects, and prohibited the exportation of tobacco and certain other enumerated commodities, to any place without the dominions of

The system of restrictions upon the commerce of the colonies introduced and established during the reign of Charles I.





England, under the penalty of forfeiture. The next step was to provide, that the imports of European commodities should reach the colonies only through the mother country: and this was effected by the statute 15th Charles 2d, chap. 7th; which required, that every commodity of the growth or manufacture of Europe, about to be imported into the colonies, should be shipped in England, and carried thence to the colonies, only in vessels owned and navigated by English subjects. From these restrictions upon direct importation, were excepted a few articles of necessity, which it is not necessary to specify. Still the commerce in the enumerated commodities, although it could not be carried on without the English dominions, was yet open to every part of them; and it now became a grievance in the eyes of the English parliament, that the trade in these articles was carried on between her own colonies without any immediate revenue to England. *Taxation of colonial commerce was the next remedy*, and a new statute was now passed, 25th, Charles II, chap. 7th, which provided, that if bond were not given to secure the exportation of the enumerated commodities directly to England in the first instance, then certain *duties* should be paid to the crown upon their *export* to other parts of the English dominions. Places were to be designated, and officers to be appointed for the collection of these duties in the colonies, and thus was fully introduced the restrictive system of England, which made her ever afterwards the *carrier*, the *manufacturer*, the *vendor*, and the *purchaser* for the colonies. This restrictive system subsequently underwent many occasional changes and enlargements; but from this period we may date the full establishment of that supremacy over colonial commerce, which England exercised without scruple, and often to the oppression of the colonies, until the approach of the American revolution.

It became now with England the established doctrine, that she was the heart through which the whole commerce of her colonies must pulsate. It was not established without opposition. The colonies evaded, entreated, and resisted, to a degree which kept Charles in a state of continual irritation throughout his whole reign. The proprietary came in for a full share of his rebukes. The navigation act had for a time operated very oppressively

First reception and final establishment of this restrictive system within the colony of Maryland.





upon Maryland. Its inhabitants, devoted almost exclusively to planting, had no shipping of their own, and relied entirely upon others for the exportation of their produce. It appears from their revenue acts and their other Assembly transactions, that the Dutch, at the passage of this act, were the principal carriers of the trade of the province. These being excluded, it required the operation of the act for some time, so to enlarge the shipping of England, as to give the colonists the same facilities of transportation, which they had previously enjoyed, when the shipping of the whole world was open to them. Being speedily followed by the acts relative to the export of the enumerated commodities, it soon involved the proprietary in difficulties with the crown. One of these enumerated articles was *Tobacco*, which was the principal, if not the sole export of the colony; and these acts in effect reached their whole commerce. The proprietary's situation would not permit him to take the broad ground of entire exemption under his charter; but he maintained, that his subjects were not bound to export their tobacco to England or Ireland, or to give bond for that purpose, if they paid the duty. The collectors were soon drawn into very angry contests with him, in which they were sustained by the crown; and the proprietary was warned to look to it, lest he might be stripped of his charter. These dissensions continued in some degree, until the Protestant revolution in 1689, when the proprietary was stripped of his government by his own subjects; and his very defence of the commerce of his colony against the oppressions of the crown collectors, was made a substantive charge against him by his own people. Thus, by the excitement of the moment, the colonists themselves were ranged on the side of the restrictive system. From that period it was rivetted upon the colony, and its general validity does not seem to have been questioned. Acknowledged and sustained by the colony, as predicated upon *a mere power to regulate commerce*, it was considered as the limit of the supremacy of England, and was distinguished from *the power of internal taxation for the purpose of revenue*.

Under the fifth article of the charter, the proprietary was entitled to the patronages and advowsons of all churches within the province. He was also licensed to found churches, chapels, and places of worship within

Ecclesiastical powers of the proprietary.



it, and to cause the same to be dedicated and consecrated according to the ecclesiastical laws of England. These powers require no comment.

Passing from this general view of the proprietary government, and of the character, extent, and exercise of its constituent powers, we propose to consider briefly the *personal rights and revenues of the proprietary flowing from it.*

Of these, the first in order and importance were those, which arose from the ownership of the soil of the province. Under the charter, the proprietary was both the ruler of the province and the owner of its soil; and the peculiar powers possessed by him, therefore fall properly under two general classes, having reference to these distinct rights of soil and jurisdiction. Although blended in the grant, they were yet distinct and independent; and hence during the long interval from 1689 to 1716, when the proprietary government was suspended, and the province under the immediate administration of the crown, the proprietary, although stripped of his rights of jurisdiction, was left in possession of his rights as the owner of the soil. The grant and tenure of the province, as held by the proprietary of the crown, were determined by the third, fourth and fifth articles of the charter. The limits of the grant have already been described. The limitation of the grant was to Cecilius, baron of Baltimore, his heirs and assigns; and the ownership of the province was therefore assignable. The proprietary and his heirs were constituted "the true and absolute lords and proprietaries of the province," reserving only the allegiance due to the crown, and its sovereign dominion. The province was held of the kings of England, as of their castle of Windsor in the county of Berks, in free and common socage, by fealty only for all services, and not in capite nor by knights service; and the render by the proprietary to the crown, in acknowledgment of the tenure, was "two Indian arrows of the province, to be delivered annually at the castle of Windsor, and the fifth part of all gold and silver ore discovered within it."

The whole province being thus held of the crown, the proprietary, his heirs and assigns, were empowered to make grants of





His power to make sub-grants of the lands of the province, and the tenure of those sub-grants. any estate or interest in its lands, to be holden directly of them and not of the crown, by the same species of tenure under which they held the province of the crown: and the restrictions of the statute, 18 Edward 1st, chap. 1st, commonly called "*the statute of Quia Emptores*," were expressly dispensed with. Hence the proprietary was at once the sole tenant of the crown, and the exclusive landlord of the province. It would be foreign to our purpose to dilate upon the nature and incidents of the tenure by free and common socage, which was common to the grant of the province and the sub-grants from the proprietary. These are fully described in various elementary treatises, which are within the reach of every reader. It is sufficient to remark, that the services rendered under it by the tenant to the landlord, in acknowledgment or consideration of the grant, were fixed and determinate, so that the tenant was above the reach of exaction; were of so free a character as not to degrade the tenant in the performance of them; and were pacific in their nature, in contradistinction to the military services which might be required under the tenure by knight's service. At the period when the charter of Maryland was granted, it was the most favored and beneficial species of tenure known to the laws of England. Its free, certain, and pacific services, placing the tenant above the occasional exactions and oppressions of the landlord, gave it an ascendancy over every other tenure, which was at length consummated in the mother country, during the reign of Charles II., by the entire abolition of the tenure by knight service. This socage tenure having always been the exclusive tenure of the province, and having existed here in its most ameliorated form, it carried with it encouragements to emigration, and incentives to industry, which can scarcely be sufficiently appreciated by those whose experience has not made them familiar with the oppressions incident to the other tenures.

The manner and terms of his grants in conformity to this tenure, being thus left to the exclusive determination of the proprie-

tary as to that of any private owner of lands, he retained and enjoyed his exclusive control over them, throughout the whole period of the proprietary government. This was a private and personal right, which he did

The manner in which it was exercised.





not choose to submit to the legislature of the province; and as the holder of its soil in his own right and for his own benefit, he would have acted very unwisely in suffering his rights of ownership to be bound and controlled by public laws. His conditions of plantation, proclamations and instructions, always prescribed the conditions on which the lands of the province should be granted, and the manner and terms of the grant. In the same manner were determined, the organization of the land office, and the powers and duties of the several offices appurtenant to it. All that relates to the history of the establishment and organization of the land office, and of the modes of proceeding from time to time adopted in it, belongs to the particular view of the past and present structure and operation of the land office, hereafter to be presented.

The proprietary's revenue arising from his land grants, consisted Sources of the proprietary's land revenue. *in quit rents, caution money paid at the time of the grant, and alienation fines, including fines upon devises.* The profits arising from reliefs and primer seisins never existed, as incidents to the tenure of lands in the province.

The *Quit Rents* were the annual rents, reserved by the proprietary in his grants, and to be perpetually paid from year to year by the owner of the land granted, in acknowledgment of the tenancy. They were *rent charges*, charged upon the land when it was first granted out by the proprietary, and they constituted the only revenue from land grants which was looked to in the first settlement of the colony. The quantum of the rent to be reserved was always regulated by the proprietary's proclamations or instructions, and it varied continually throughout the government with the varying value of the lands to be granted, and the views of the proprietary. In the earliest grants under the first conditions of plantation, the rent was made payable in wheat: but in general, with regard to the rights acquired after the year 1635, the rent was payable either in money alone, or in the commodities of the country, at the option of the proprietary and his officers. This right of the proprietary to require payment of his rents in money, was attended with great inconvenience and oppression to the people; and hence, as early as 1671, it was commuted for payment in tobacco. The act of 1671, chap. 11, which originated this commutation, imposed a



duty of two shillings sterling on all exported tobacco, of which one half was given to the then proprietary for his own use, and the residue for the defence of the province, in consideration of his agreeing to receive tobacco for his quit rents and alienation fines, at the rate of two pence per pound. This mode of payment was continued until the year 1717, by a variety of acts, which will be noticed in detail when we come to treat of the revenue arising from the tobacco duty. The system of commutation, although it relieved the inhabitants from some of the grievances arising from the collection of quit rents, by opening to them an easy mode of payment, left them still subject to oppression from the collectors. These petty officers, clad with brief authority, and scattered over the whole province, were continually vexing and harassing the people; and the Assembly at last resorted to the expedient of buying out the rents and alienation fines, as the only effectual mode of relief. A new law was therefore passed in 1717, act of 1717, chap. 7th, which gave to the proprietary, for his own benefit, a duty on all exported tobacco, of two shillings sterling on every hogshead, and four pence sterling per hundred on all tobacco exported in box or case, &c. and so *pro rata*, "in full discharge of his quit rents and alienation fines." This temporary law was continued by several acts until September, 1733, when it was suffered to expire: and from that period until the American revolution, there being no commutation, the quit rents were payable according to the requisition of the patents. During this interval, it appears that all the evils of the old system of collection returned in full force. Scarcely a session of Assembly elapsed, without some complaint of outrage or oppression on the part of the collectors of these rents: and every effort was made by the Assembly to induce the proprietary to accept an equivalent for them. At the session of 1735, they endeavoured to renew the commutation, and addressed the proprietary in person upon that subject. In his reply to their proffers, which was laid before the Assembly at the session of April, 1737, he declined them with the remark, that the Assembly were not apprised of the increased value of his rents, for if so they would not have deemed their offer an equivalent. To meet and to address their offer to this increased value, the Assembly, at the session of 1742, requested the governor to cause to be laid before them an account of the net annual revenue





of the rents. This request was not complied with; and at the session of 1744, the Assembly, without ascertaining the value of the rents and fines, agreed to give the proprietary, in their stead, a duty of two shillings and sixpence sterling on all exported tobacco. Wearied by the importunities of the Assembly, he at length authorised the governor to agree upon an equivalent: and at the session of August, 1745, the lower house sought, and obtained from the governor, an account of the then annual value of the rents. The governor then demanded for the proprietary, and the Assembly ultimately agreed to give £5000 sterling annually in lieu of the rents and fines; and an act was passed, appropriating this amount, and imposing duties on tobacco and several other articles, for the purpose of raising it. Yet, although it came up to the governor's proposition, he declined acting on it at that session: and from that period until the revolution, the hopes of commutation were abandoned. Of the value of these rents, throughout the proprietary government, it is difficult for us, at the present day, to speak with accuracy. They were the private property of the proprietary. They were collected exclusively under his directions: and the returns of the collecting officers made no part of the public records. From the transactions of the Assembly, at the very period when they were negotiating for a commutation, it appears that they had no accurate knowledge of the amount of revenue derived from them. There are no *data* amongst the records of the province, from which we can form any estimate of their value, whilst the commutation system was kept up. After the return in 1733 to the old mode of money payments, a more regular system of collection was adopted: and from this period until the revolution, many of the debt books for the several counties have been preserved, and may now be found in the land office. These *debt books*, as they were termed, were the books placed in the hands of the collectors of the rents, which specified the rent due by each individual, and the lands on which it accrued: and evidencing, as they do, the possession of the lands specified by the individual charged, and generally noting the transfers, they are often relied upon to furnish a presumption of title. From the report made to the legislature, in 1745, it appears that the *net amount* then received by the proprietary from the quit rents, was £1568 15s. 4d.: and from the best estimate which can be col-





lected from the existing debt books, it appears that, in the year 1770, their gross amount was about £8,400 sterling, and the net revenue of the proprietary from them, after deducting the expenses of collection, upwards of £7,500 sterling. This estimate is at least sufficiently accurate to give us a general notion of their value then and during the intermediate period.

The sagacity of the wise and benevolent Cecilius, the first proprietary of Maryland, is conspicuous in the policy pursued by him, in granting the lands of the province. The first wish of his heart was to see its population increase and its commerce prosper. Looking to the future beyond the petty ambitions and interests of the moment, he saw that his reputation and permanent interests were identified with the prosperity of the colony; and with the sagacity to perceive, and the heart to feel this, he made his rights of property in the province minister to its advancement. His lands were offered as *premiums for emigration*. Adventurers were encouraged to come into the province, and to bring their servants and dependants with them. Every person transporting himself into it, was entitled to a certain quantity of land, without paying any caution or purchase money, and the land granted was charged only with a moderate quit rent. If he brought others with him, he was allowed for their transportation a further quantity, which was proportioned to the numbers, age and sex of the persons transported, the highest premiums being given in some of the earliest conditions of plantation, for the transportation of males between 15 and 60, and of females between 14 and 43. These land rights were prescribed by various proclamations, issued from time to time by the proprietary, which were familiarly called, "*The Conditions of Plantation*." They were frequently varied, according to the necessity for inducements to emigration, or to promote the establishment of settlements in particular portions of the State; and it would be an idle labor to detail the various conditions which they proposed. The curious reader will find them at large in Mr. Kilty's *Landholders' Assistant*. They were all predicated upon the wise and liberal policy to which we have adverted, and which alone it is now our purpose to describe. These plantation rights are the only modes of acquiring lands recognized in the conditions of plantation:



but besides these, there were land rights acquired under warrants for land granted by the proprietary to particular individuals. The system of purchase upon payment of the caution money, with which we are now familiar, was not known in the first years of the colony. The lands were not open to all who might choose to purchase them, upon payment of a defined amount of caution money. The special warrants were granted entirely in the discretion of the proprietary, and were inconsiderable in the amount of land affected by them, when compared with the settlement rights acquired under the conditions of plantation: and the latter remained the principal mode of acquiring titles to the ungranted lands, during the life of the first proprietary, and for some years after his death. The population and resources of the colony, at the death of the first proprietary, had increased to such a degree, as to render unnecessary these inducements to settlers; and this general mode of acquiring lands under plantation rights, which had in the first instance admirably answered the purposes of its institution, was now becoming productive of extortion and abuses. It was therefore entirely abolished by the new proprietary in 1683: and a new system was then adopted, under which all persons were permitted to sue out warrants for lands upon payment of a definitive amount of purchase money, which was called "*caution money*," because no warrant could issue until it was paid or secured. (9) Thus was fully introduced the system of granting lands which has prevailed here until this day. The amount of the caution money was regulated from time to time by the proprietary's proclamations and instructions; and although of small amount, at some periods it must have produced a considerable revenue. Yet there are no records of the province, nor documents within our reach, which enable us to state what was the amount received under it by the proprietary at any time.

(9) This proclamation of 15th May, 1683, may be seen at large in Kilty's *Landholders' Assistant*, 124. It relates: "that whereas the taking up of lands, by rights, in the province, hath proved not only grievous and burthensome to the inhabitants, as well for want of such rights upon their occasions as for paying for the same extravagant and extortious rates when to be procured; but also very injurious and prejudicial to ourself by undue and unjust probate made of such rights as we have seen and been informed, therefore, &c." This recital illustrates the cause of the change above mentioned.





We can therefore only describe the caution system, and advert to it generally as a source of proprietary revenue.

*Fines for alienation* were the incidents of the feudal tenures generally, as they originally existed in England.

*Alienation fines.* They appear to have belonged as well to the *socage* tenure as to that *in chivalry*; and the same feudal reasons existed for their connexion with both. In their origin the feudal grants imposed mutual obligations upon the landlord and tenant to preserve unbroken the relation which they created, unless the change of it was authorised by the assent of both parties. They carried with them an implied contract; on the part of the tenant that he would not alien the lands held by him without the consent of the lord of the fee, and thereby impose upon him a new tenant who was not in his contemplation at the time of the grant; and on the part of the lord of the fee, that he would not transfer his seignory to a new landlord, and thereby subject the tenant to a service which he had never anticipated. Whilst these mutual obligations existed in full vigor, they constituted the most endearing feature and effectual preserver of the feudal relation. But the lords of the fee soon emancipated themselves from this restraint; and the obligation, ceasing to be mutual, became a mere instrument of extortion from the tenant. The former, being themselves under no restraint, would not grant to the latter the license to alien, without compensation; and if they aliened without license, the land was forfeited. The abuses of this power were at length regulated in England by the statute 1st Edward 3d, chap. 12th, which fixed the fine to be paid by the tenant for the privilege of conveying away his lands at the one-third of their yearly value; and the forfeiture for alienation without license at the full yearly value. Such was the origin of fines for alienation, which existed in England as the incidents of the *socage* tenure, at the time when the charter of Maryland was granted. In England, having been suspended by the commonwealth dominion, they were at length utterly abolished in 1660, immediately after the restoration of Charles II. by the statute 12 Charles II. chap. 24. To the province of Maryland they were transplanted with the *socage* tenure; and here, notwithstanding their abolition in the mother country, they continued to exist until the American revolution. It does not indeed appear that they were noticed





in the early instructions or conditions of plantation; or that they were collected in the first years of the colony. This may be, in some measure, accounted for by the nature of the plantation rights. Yet these fines were the incidents of the tenure, as it existed when established in the province; and they therefore followed it without express reservation. The first notice of them, which we find, is contained in the conditions of plantation of the 22d September, 1658, which directed, that in all grants issued thereafter upon plantation rights, there should be reserved upon the patent one years' rent for a fine, to be paid upon every alienation of the land granted, such rent being estimated by the rent reserved as quit rent. The officer issuing the patent was also directed to insert in it a condition, that the tenant should not alien the land without entering the alienation either upon the records of the provincial court or those of the county in which the land lay, and that the fine should be paid before alienation, or else the alienation to be void. Thus were they fully introduced, and thus they existed until the revolution. When the commutation for the quit rents was agreed upon and fixed by the act of 1671, chap. 11, the alienation fines were included in it, and also in that of the act of 1717, chap. 7, which was substituted for the former. The latter act having expired in 1733, these fines, as well as the quit rents, became payable in money, and continued thus payable until the revolution. Devises being a species of conveyance, alienation fines were charged upon these as upon alienation *inter viros*; but after the fall of the commutation system, they were considered by the inhabitants of the province as a great grievance. At the session of Assembly, in 1739, a series of resolves, declaratory of the grievances of the province, were adopted by the lower house, one of which was particularly aimed at alienation fines on devises: and the proprietary at length yielding to their wishes in this particular, the fines on these were utterly abolished in 1742. (10)

The *proprietary revenue* flowing from other sources than his land rights, arose principally from *the port or tonnage duty, the tobacco duty, and the fines, forfeitures and amercements*. From the year 1739 until the

Proprietary revenue arising from other sources.

(10) They were abolished by governor Bladen's proclamation of 20th October, 1742.



American revolution, the proprietary claim to these revenues was the source of continual and embittered contests, between the lower house of Assembly and the governors of the province. The journals, throughout that period, abound with resolves and addresses, denying the proprietary's right to them, and denouncing the collection of them as illegal and oppressive. Enduring until the close of the proprietary government, the levying of them was always a part of the public grievances of the moment; and it even entered into the causes which produced the final overthrow of that government. Occupying, as they did, so large a space in the transactions of the colony, and constituting important branches of revenue, we shall be pardoned for briefly adverting to the origin and history of these duties.

The *Port or Tonnage duty* originated in the act of 1646, chap. 1, entitled "An act for customs." This act was passed immediately after the disturbances occasioned by Clayborne and Ingle's rebellion, and gave to the proprietary a duty of ten shillings per hogshead on all exported tobacco, besides a small duty on wines and hot waters, (as they were called) to enable him to defray the expenses incident to that rebellion. It was found soon too oppressive in its effects upon the infant commerce of the colony, and its operation was therefore suspended by the proprietary, at the instance of the Assembly, by whom a duty was granted, in lieu of it, of the same amount, on all tobacco exported in any Dutch vessels not bound to any of the English ports. (11) In 1658, and after the government had been recovered by the proprietary from the protector's commissioners, this suspending act of 1649, being a mere temporary act, had expired; and to prevent the revival of the act of 1646, a new agreement was made between the Assembly and the governor, which led to the passage of the act of 1661, chap. 7. This act repealed that of 1646, and gave to the proprietary a port and anchorage duty of one half pound of powder and three pounds of shot, or their value, "on all vessels trading to the province and not owned in it, having a deck flush fore and aft." This act of 1661 was confirmed amongst the perpetual laws by the act of 1676, chap. 2d, and the discrimination made by it between foreign vessels and those owned in the province, rendered more definite by

(11) 1649, chap. 9.





the act of 1682, chap. 4. The duty itself was soon commuted for a money duty of 14*d.* per ton. Upon the occurrence of the Protestant revolution, by which the proprietary was deprived for a considerable period of the government of the colony, the house of Assembly claimed the revenue under this act as a public fund, and passed an act appropriating it for the support of government. The crown, acting under the opinion of *Trevor* the solicitor general, disallowed this act, and decided that this duty was a part of the personal and private revenues of the proprietary, which did not pass from him with the government. Under this decision, he was permitted to collect it until the restoration of his government in 1715; and after that restoration, it appears to have been received and enjoyed by him in his own right, without interruption or question, until the year 1739. The dissensions of that period brought it up amongst the public grievances; and from that moment until the proprietary power was ended, although it was still received and applied as the personal revenue of the proprietary, the lower house of Assembly waged against it an unceasing war of resolves and addresses. They returned to the allegation of the Assembly of 1692, "that it was, in its origin, not a port but a fort duty, given to the proprietary for the defence of the province; and that being thus public in its nature and uses, it had been repealed by the general repealing act of 1704." Although their manifestoes had not the effect of removing the duty, or of procuring its appropriation to public uses, they were not without their benefits. They familiarised the people to the notion, *that all taxes and impositions not sanctioned by their assent were illegal*; and inculcated proper views of government, by continually presenting their rulers to their consideration as the mere trustees of the public. The only estimate which we have of the amount of this revenue is that of the lower house in 1765, which rates it at from 900 to £1200 sterling per annum. (12)

(12) The report of the committee of accounts, of 10th December, 1765, estimates the annual revenue from it at from 1000 to £1200 sterling. The message from the lower to the upper house, of 16th December, 1765, states the receipts to be upwards of £900 sterling annually.





The *Tobacco Duty*, which is generally denominated, in the proceedings of the Assembly, *the 12d sterling per hogshhead*, originated in the act of 1671, chap. 11.

This act imposed a duty of two shillings sterling per hogshhead on all exported tobacco, of which the one half was given for the defence of the province and the support of government; and the residue to the proprietary for his own use, in consideration of his agreement to receive tobacco for his quit rents and alienation fines, at the rate of 2*d* per pound. Its provisions, which were originally limited to the life of the first proprietary, were continued during the lives of Charles Calvert, and his infant son, Cecilius Calvert, by the subsequent acts of 1674, ch. 1, and 1676, chap. 3. Upon the occurrence of the Protestant revolution, the proprietary's title to this branch of revenue was also drawn into question; but upon his signifying his willingness to adhere to the conditions of the grant, his title to the one half of this duty, as his personal revenue, was sustained by the crown; and during the interval of the royal government, the proprietary continued to collect it for his own use. The lives, during which these acts were to continue, having at length fallen, a further agreement for the commutation of his fines and quit rents was made in 1716; and finally in 1717, by the act of 1717, chap. 7, they were purchased out by the Assembly. This act of 1717, gave to the proprietary, for his own personal benefit, a duty of two shillings sterling per hogshhead, or four pence sterling on every hundred weight of tobacco exported in box, case, chest or barrel, and so *pro rata*, in full discharge of his rents and fines: and being temporary, it was continued by various acts until October, 1732, when it was suffered to expire. The one half of the duty of two shillings sterling, which was originally given for the defence of the province and the support of government, was all that now remained of it. This, as a public fund, the proprietary was divested of at the time of the Protestant revolution; and it was then applied to the support of the government. Under the last of the acts passed for its appropriation during the royal government, the act of 1701, chap. 42, this duty of 12*d* per hogshhead was given to the Queen, her heirs and successors to the throne of England, for the support of their government, for the time being, over the province; and



was principally applied, under the direction of the crown, to the support of the royal governor. From the restoration of the proprietary in 1715 until 1733, the duty does not appear to have been collected, because of the enlarged revenue given to him by the temporary commutation acts existing during that period; but upon the expiration of those acts, the tobacco duty wholly ceasing, and the proprietary being remitted to the collection of his rents and fines according to the tenor of his grants, the collection of the 12<sup>d</sup> duty under this act of 1704 was resumed. It appears to have been collected from that period until 1739, without any direct opposition on the part of the Assembly. At this latter period, the propriety of its collection was drawn into question by the committee of aggrievances of the lower house, which then reported, that it was a duty applicable by its express terms only to the royal government, and as such became extinct by the restoration of the proprietary; and that the collection of it was an assumption of the power of levying money under the pretence of prerogative, which was inhibited even to the kings of England. To evince that they were contending only for the principle, they agreed to secure to the governor *by law*, the same amount of duty; and they accordingly passed an act for that purpose, the preamble of which is worthy of preservation, as exhibiting the same sentiments in relation to the proper source of taxation, which were triumphantly maintained at the era of the American revolution. "Your excellency (say they, in their message to the governor proposing this law,) is too well acquainted with the nature of the British constitution to be informed by us, that it is the peculiar right of his majesty's subjects not to be liable to any tax or other imposition but what is laid upon them by laws to which they themselves are a party; and we do with the greatest sincerity assure your excellency, that it is in pursuance of this, our undoubted right, and for no other cause, that we give you the trouble of this address." The preamble to the act itself sets out, "*that it is not their intention to deprive the governor of an honorable support, but only to assert and maintain to themselves, their constituents, and posterity, that principal and most essential branch of liberty, to which they conceive themselves entitled, as subjects of Great Britain, of not being liable to the payment of any money, tax, impost, or duty, ex-*





*cept such as shall be warranted, raised, and assessed by the laws of the province."* The act itself was not acceptable to the governor, because it was temporary. It failed: and from that period until the American revolution, the collection of this duty was continued in defiance of all the remonstrances of the lower house of Assembly. That body, however, never yielded its opposition. The controversy was revived in 1750, and the lower house then adopted certain resolves, denouncing the levying of the duty as illegal, which became the standing resolves of the lower house, even down to its latest sessions under the proprietary government: (13) and on the frequent after occasions, when this house thwarted the views of the governor or his council, they continually appealed to the levying of this duty as a part of their justification. The revenue arising from it was estimated by the lower house in 1765, at £1400 sterling per annum. (14) At the succeeding session of May, 1766, under a call from the lower house, the actual receipts from this branch of revenue from the 29th September, 1759, to the 29th September, 1765, were reported to that house. From this report it appears, that during these six years it had yielded £9,263 1s. 4½d. sterling; and therefore the average annual amount was a little upwards of £1543 sterling.

(13) The following were the standing resolves alluded to in the text:

*Resolved*, That the levying and taking of the sum of 12d. sterling by the right honorable the lord proprietary of this province, on all tobacco exported out of the same, under pretence and color of the act of 1704, is not warranted by law.

*Resolved*, That if the above act of 1704 had been in force from the restoration of the government by the crown to the lord proprietary, to this time, yet the sum of three pence sterling, part of the said sum of 12d sterling, agreeable to the plain construction of the above mentioned act of 1704, and her late majesty queen Anne's instructions to her governor here, when the said act was in force, ought to be applied towards the purchasing of arms and ammunition for the defence of the province.

They were re-adopted by the lower house, at many after sessions. See the journals of lower house, May 31, 1750. 8th June, 1751. 13th December, 1754. 30th September, 1757. 24th October, 1758. 17th March, 1762. 2d November, 1765, and 3d October, 1771.

(14) Report of committee of accounts of 10th December, 1765, and message of lower house of 16th December, 1765.





*The common law fines and forfeitures* imposed in the courts of the province, enured to the proprietary, as the head of the government, and the fountain of justice in the colony. Being incident to his relation as governor of the province: when he ceased to be such by the happening of the Protestant revolution, it was properly decided, that his right to them passed with his government to the crown. Upon his restoration, his title to them returned as its incident. There were also a great variety of fines imposed by acts of assembly, the whole or a portion of which were granted to the lord proprietary by the acts imposing them, either for specific purposes, or generally without limiting their uses. *The amerciaments* were finally regulated under that government by the act of 1722, chap. 12, under which, those in the county courts were applied to the payment of the county charges; and those in the provincial courts, were to be disposed of as the governor and council might direct. These fines and forfeitures at common law, or under acts of Assembly giving them to the proprietary without limiting their uses, and the provincial amerciaments, were regarded and applied by the proprietary government, as a proprietary fund, in which the public had no interest, and this disposition of them was for some time unquestioned. As the exigencies of the government increased, and new demands were made upon the people for supplies to meet those exigencies, the attention of the lower house of Assembly was at length directed to these sources of revenue, as proper to be called in aid of the public necessities. At the session of 1745, they solemnly determined, that this revenue was a public fund; that the proprietary in receiving it, was a mere trustee for the public; and that, at all events, if it belonged to him personally, it was given to him in consideration of his support of the government, and relieved the people from the obligation to provide other means for that purpose. The controversy thus opened, the refusal to apply this fund to public uses became a standing complaint in the colony, which never ceased until it was merged in the revolution. (15) The

(15) There is a very able and elaborate report upon the subject of the proprietary title to these fines, forfeitures and amerciaments, which appears on the journal of the lower house in 1765. It was made by William Murdock, a delegate from Prince George's county, who was also very conspicuous at



annual revenue from the fines and forfeitures, was estimated by the lower house, in 1765, at upwards of £400 currency; and the provincial amerciaments, at upwards of 2500 pounds of tobacco. Their estimate as to the amerciaments fell greatly below the actual receipts; for it appears from a report as to these, made to the lower house in 1767, that they had yielded in six years, from September, 1659, to September, 1765, 42,969 pounds of tobacco; or an average annual amount of about 7130 pounds of tobacco. (16)

The lord proprietary enjoyed also certain personal rights, as incident to his office and dignity, to which we shall briefly advert. He had a preference in the payment of all debts due to him. (17)

Personal rights incident to the office and dignity of the proprietary. Since the revolution, it has been determined that the reasons of the doctrine, "*Nullo Tempus occurrit regi*," did not apply to his situation; and that

he was therefore within the operation of the statutes of limitation, although not expressly named. (18) But the contrary opinion appears to have been maintained before the revolution. (19) Whether he could sue and be sued in his courts, has also been a debated point. It appears that suits were frequently brought in his name as plaintiff, and the established doctrine seems to have been, that he might sue in his own courts; but there is no precedent of an adversary suit against him. (20) The

that period, for the part which he sustained in the transactions of the province, with reference to the stamp act. This report is a state paper, which would reflect honor on any man or any assembly.

(16) See the journals of 10th and 16th December, 1765, &c. Many of the messages, connected with the various controversies about these branches of revenue, are written with great vigor and even elegance of style. They breathe every where the spirit of men, who had never been tamed to submission, and who were as familiar, as we of this day, with the proper uses of government. They shew us a people trained to independence before it came. Such is particularly the case with the messages at the session of 1765.

(17) Act of 1650, chap. 28.

(18) Kelly's Lessee vs. Greenfield, 2 Harr. and M'Hen. 138; and Russell's Lessee vs. Baker, in 1800, 1 Harr. and John, 71, where the question was very fully argued.

(19) 1 Harr. and M'Hen. 151. 2 Harr. and M'Hen. 279. Martin's Argument in 1 Harr. and Johns. 82 and 96

(20) 2d Harris and M'Henry, 374 and 339.





weight of the reasoning was unquestionably against the propriety of permitting suits to be maintained, either by or against him in his own courts; (21) but the practice of those courts having admitted and sanctioned his right to sue in them, the whole force of the objection to the maintenance of suits against him, was thereby destroyed. His right to sue being conceded, it has therefore been determined in our courts since the revolution, that he might also be sued in them. (22)

The summary view of the proprietary government, above given, presents to us all its prominent features and tendencies; and the review of them is calculated to inspire the citizens of Maryland with feelings of pride and gratitude. It was indeed a colonial government, and subject to thralldoms which we have never known. Yet it was *a government of laws administered by freemen*, and the nursery of our free principles and institutions; and in contrast with all the colonial governments of that day, we may truly say of it, "*It was full of power and privilege to the subject.*"

(21) See the opinion of those distinguished lawyers, Francis Hargrave and Daniel Dulany, in 2d Harr. and M'Hen. 345 and 359.

(22) Calvert's Lessee against Eden and others, 2d Harr. and M'Hen. 339.





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## CHAPTER II.

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### THE HISTORY OF THE GOVERNMENT OF MARYLAND, FROM THE COLONIZATION UNTIL THE PROTESTANT REVOLUTION.

THERE are three prominent periods in the *colonial history* of Maryland, anterior to the year 1763, each of which may be considered as the commencement of a new aera in the history of its government and the character of its institutions. The *first of*

Aeras in the colonial history of Maryland.

*these aeras* begins with the colonization of the province, and terminates with the year 1688. The *second* commences at the latter period with the internal dissensions, which led to the formation of the Protestant association, and through its instrumentality to the overthrow of the proprietary government; and extends over the whole interval of the royal government, established upon the downfall of the proprietary power. The *third aera* extends from the restoration of the proprietary government in 1715, to the treaty concluded at Paris in 1763. The origin of each of these aeras is identified with the establishment of a new government; and it gives us an advantageous and commanding position, on which we may pause to survey the general character and results of the government which preceded it. Such resting points for the review of the transactions of the past, always assist the inquiring reader, in carrying along, in one connected view, the causes and effects of national rise or decline, and in marking their reciprocal operation and combined results. From the treaty of Paris we may properly date the commencement of the *revolutionary aera*, which terminated in our independence; and during which, the annals of Maryland contain nothing but the history of her resistance to arbitrary power, and of her triumph over oppression. Her government and all her institutions, had then obtained the form, strength and consistence, which they preserved



until the revolution. Her internal power and resources were all developed; the character of her people already formed; and their notions of political and civil liberty already matured. Acquainted with these, then and not until then, we are prepared to enter upon the history of her revolutionary struggle.

In the colonial history of Maryland, throughout the period which preceded this struggle, the events immediately connected with the introduction of each of the æras already alluded to, constitute nearly the whole of what may be termed its external history, in contradistinction to that of the mere internal administration of its government. It embraces a period of one hundred and thirty years, in the progress of which a little band of two hundred emigrants, seated at a single point on the southern extremity of the province, had become a wealthy, populous and self-relying colony, diffused over every portion of it, and carrying to its every border the arts and enjoyments of civilized and refined life. The war-whoop had given place to the hum of busy and contented industry. The deep, dark forests, which had been soiled only by the trace of the savage, had been succeeded by the fields of the husbandman. It was no longer the red man's home and heritage, and "the very places which once knew him now knew him no more for ever." Yet these moral and political changes, effected by this settlement, were but the noiseless results of its gradual extension; and have brought down to our times but few of those lofty enterprises, daring achievements, extraordinary occurrences, or peculiar traits of character, which illustrate a people, or give interest to history.

*Colonial History*, in general, presents to us but few of those spirit-stirring incidents which enter into the transactions of full grown and established nations. It is but the history of a people's infancy; and with the great body of mankind, the adventures of an infant people awaken as little interest and command as little attention, as those of an individual's infancy. They want that strength and power, and those far reaching views and enterprises, which import a kind of moral sublimity to national transactions. They exhibit none of those sudden and extraordinary results, which extend their operation to other nations. They relate to a

The Colonial history of Maryland, distinguished more by results than by incidents.

Causes which diminish the interest of Colonial History generally.





people, whose distinct and peculiar existence as such, has not been of sufficient duration to give them a distinct and peculiar character; or to give interest to their transactions, either by the illustrations which they afford of that character, or by borrowing lustre from it.

The nature of the occupations and pursuits of *colonies*, in the first years of their establishment, is not calculated to evolve events deeply interesting to the age in which they occur. The infancy of colonies, as well as that of individuals, is busied about self improvement and establishment; and in preparing themselves for the part which they are to play at maturity. The individual, in youth, is devoting himself to the acquisition of knowledge, and the discipline of mind and body, which fit him for his intended pursuit in life. The infant colony is gradually extending its settlements, increasing its population, enlarging its resources, and accommodating its institutions to its gradual advance; and many years must elapse, before it acquires that strength, consistence, and reliance upon self, which are necessary for the development of its energies, or give it consequence in the eyes of others. The age in which it springs up, does not begin to feel a lively interest in it, before it has acquired these; and then the interest begins too late for the collection and preservation of its early history. Here again, the parallel holds good between individuals and nations. When the manhood of the former has been rendered conspicuous by displays of virtue or ability, then, and not until then, is the public curiosity directed to their infancy for its early promises and pursuits, and then but little remains to be gleaned from the recollections of those who observed them. The individual himself knew not his own power, saw not in the bright future the space which he was destined to occupy in the public mind, and did not mark the traces of his own course. So it is with nations; and hence it is that so few memorials of their early history are preserved. That which is preserved, is generally that which is least worthy of preservation. The pigmy warfares and marauding expeditions of a colony are of little importance in its history. We wish to know merely its general condition, the circumstances which





formed the peculiar habits and character of the colonists, and the sources of the institutions which they have transmitted to us; and unfortunately, the transactions from which we could principally collect these, are connected solely with its internal and domestic administration, of which the accounts we have, are often neither copious nor authentic.

Besides these general causes, there were others peculiar to Maryland, which tended to deprive its mere civil history of the incidents calculated to give it interest with the great body of readers. Men do not, in general, look into history, for the transactions of a calm, gentle and contenting administration of government. The records of the mild and noiseless display of benevolence and virtue, either in public or private life, too often sleep upon their shelves. The gradual accessions to a nation's wealth, power, and liberty, which she derives from a peaceful devotion to her own interests, are perceived only in their general results; whilst in the transactions of periods of turbulence or warfare, the results are overlooked for the incidents. Such is our nature, that the memorials of high-reaching ambition or daring crime are sought with avidity, whilst those of virtue, more lofty in its aim and diffusive in its ultimate operation, are left to their slumbers; and the campaign of Italy has more interest, than the story of our own country rescued from the wilderness and advanced to happiness and independence. The administration of the colonial government of Maryland was, in general, mild and peaceful; and hence, except at one or two periods of short duration, it evolved but few of those striking transactions, or peculiar displays of talent and character, which are brought forth by occasions of excitement. It has not even the Indian wars, which give a spice to the history of some of the northern colonies; for its course towards these primitive owners of the soil, whilst it secured their subjection and obedience, yet tolerated their existence, and extended to them the protection of its laws and the duties of humanity. Religious persecution, beyond the denial of public trusts and employments, was almost a stranger to the province; and we have therefore no accounts of martyrdom to stain its annals.

The Colonial administration of Maryland, not calculated to evolve striking incidents.



The establishment of its institutions makes up its history; and the view which we are about to take of the transactions of the province, is limited to such a general consideration of them as will suffice to illustrate the establishment of the former. The scanty materials which our records furnish, would not permit us to extend our views beyond this, even if it were desirable; and they leave us at last without any aids to illustrate the character and motives of individuals, whose transactions were identified with those of the colony, except such as can be collected from the transactions themselves. At this period, so far removed in time and character from the age in which they lived, their transactions themselves do not reveal to us the secret springs of action, the lurking motive, and the ultimate design, the knowledge of which alone can give accuracy to the portraits of history. Without these, history is but a detail of names, places, and dates; and nothing could furnish them, but the personal observation of those who were around the actors and mingled in the acts. Neither history nor tradition now lend us such aids as to the transactions of the colony; and in many instances, even these transactions themselves are lost to our view, or the accounts which we have of them barely indicate their existence. If therefore, in the accomplishment of our design, *limited as it is*, we should fall short of the expectations of the reader, we would indulge the hope that he will, at least in some degree, ascribe its imperfect execution to these causes, beyond the control of the writer. (1)

(1) "The annals of Maryland (says Dr. Ramsay) are barren of those striking events which illustrate the page of history. This is probably the reason that so little of its history has been published. Its internal peace in the period of infancy, was but little disturbed, either by Indians or insurgents, though not wholly exempt from either. Its early settlers loved their king and their proprietary. They were not given to change, but attached to ancient forms, their native country and its constitution." (Ramsay's History of the United States, vol. I. p. 144.) He illustrates this barrenness, by compressing its whole colonial history into four pages. It is the strongest testimony to prove the prosperous and contented condition of the colony, which he could have adduced; and so he himself seems to have considered it. His general remark is just; but the causes by which he accounts for it, fall short of those which actually produced it. They were attached to *forms*, only





The early settlements of the English colonies, within what are now the limits of these United States, were, in general, similar in the causes and circumstances of their establishment. It was

The desire for civil and religious liberty; the primary cause of the settlement of the English colonies in North America.

not the mere spirit of enterprise, the thirst for gain, nor the love of novelty, which impelled the early emigrants to forsake their native land, and to sever all the ties which bound them to the homes of their fathers. It was not for these alone, that they were content to go forth as wanderers from the scenes of their infancy, and the attachments of their youth. It was not for these alone, that they took up their abode in the wilderness; made their dwelling with the savage; and encountered with cheerfulness and alacrity, all the privations and dangers of a country not yet rescued from the rudeness of nature. These causes may have contributed, and no doubt did operate in peopling these colonies, but we must look elsewhere for the primary causes of their establishment, and the true sources of their rapid increase in wealth and population. This, their new home, had other charms for them: and the history of the times, and the language of the emigrants, tell us what these were. They sought freedom from the civil and religious shackles, and oppressive institutions, of their parent country; and here they found, and were content to take it, with all its *alloy* of hardship and danger. Too inconsiderable to attract the attention, or provoke the indignation of the parent government; too remote to be narrowly observed in their transactions, or to be reached by the speedy arm of power: here, unharassed by the old and corrupt establishments of their native land, yet cherishing all the genuine principles of English liberty, might they spring up to consequence and happiness. Here, unchecked in their infant operations by the jealousies of the parent, they might be permitted to lay, broad and deep, the foundations of their civil and religious liberties; and here

when they carried with them the *substance* of liberty. With them, *age* never sanctified usurpation; nor acquired respect for arbitrary power. As to the extent of their rights, they were guided by the best lights which the age afforded; and once satisfied of their existence, they maintained them to the last. They never, on any occasion, wilfully abandoned these to bow the knee to the *Baal* of *Prerogative*. Mr. Ramsay has, therefore, very justly characterised their colonial administration, as generally full of freedom and gentleness, and their colonial condition as one of happiness and prosperity.





they might hope to transmit them to their posterity, in all their freshness and purity.

The strength of these inducements can readily be collected from the condition of England at that period, as presented to us by its most approved writers. The age of almost unchecked

The circumstances which gave peculiar energy to this desire.

prerogative, which had succeeded to that of baronial turbulence and anarchy, was yet in its vigor when the early settlements were made. The religious establishments of the land had changed; but the spirit of intolerance, and the arm of civil power and oppression, were still there to sustain them, to repress the spirit of free inquiry, and to trample to the dust the holy rights of conscience. The *Commons* had risen to consequence and power, as an integral part of the nation; but the wanton exercise of prerogative was not yet effectually restrained. Arbitrary and oppressive proclamations usurping the place of legislative power, and even transcending it, were yet issued and enforced; (2) the power to dispense with laws was yet exercised; and the days of the *Star-Chamber* were not yet numbered. The character of that age was one

(2) A singular specimen of the *proclamation power*, will be found in Anderson's *Treatise on Commerce*, 2d vol. 463. It recites, "that whereas by the residence of the nobility and gentry, with their families, in the city of London, a great part of their money and substance is drawn from the several counties, whence it ariseth, and spent in the city on excess of apparel provided from foreign ports, to the enriching of other nations, ad the unnecessary consumption of a great part of the treasure of the realm; and in other vain delights and expenses; and that it draws a great number of loose and idle persons to London." And it therefore commands them to depart from London, with their families, in forty days, and to reside on their estates. If they resisted, *Star-Chamber fines* were the consequence; and the king pocketed the fines. This was a proclamation of king Charles I. issued in 1722: and it has many fellows in the proclamations issued some years before and after the charter of Maryland. Nothing was too elevated or too low, to be exempt from their operation. About the same period king Charles issued one, prohibiting the eating of flesh on fast-days; and one still more curious, relative to the manufacture of *saltpetre*, which we must not repeat, is preserved by Anderson, (2d vol. 425.) King James's proclamation war against *Tobacco*, is far less absurd than many others of his reign. These reigns may be very truly styled the *Monopoly and Proclamation reigns*; and a collection of the proclamations and monopoly patents of that period, would be truly amusing. There was one exception to their operation—they did not tax nor monopolise the air.



well calculated to call forth all the energies of tottering prerogative. The temper of the times, and the disposition of the English people, were adverse to it. The spirit of fearless research and free inquiry, which neither bolts nor bars can fetter, was abroad in the land, and menaced the existence of arbitrary power both in church and state; and the struggle which the latter maintained for existence, naturally led to its improper and inordinate exercise. It yet had power to sustain itself; and those who could not resist, were glad to seek a shelter from its oppressions. Here was a new world, yet unsullied by the establishments of tyranny or corruption; and here they came to enjoy even its rude freedom. It is well known, that all the New England settlements were promoted and established, almost exclusively by these causes. The colony of Virginia, which was seated at an earlier period, looked more to commercial purposes; but at the period when the New Plymouth and Massachusetts settlements were established, it also received accessions of population from the same causes.

The character and circumstances of the grant of Maryland to Lord Baltimore, have already been detailed. (3) It will be remembered, that George Calvert, baron of Baltimore, through  
Operation of these in producing the colonization of Maryland. whose influence and favor with the crown the grant was obtained, was the intended grantee; and that, in consequence of his death, at the moment when the charter was ready for passage under the great seal, it enured to the benefit of his son and heir, Cecilius Calvert; to whom it was therefore directly granted. George Calvert was an adherent to the principles of the proscribed Roman Catholic Church; and although, notwithstanding his religious persuasion, he still retained the favor of the king, he was not entirely exempt from those difficulties and mortifications, which always attend the profession and exercise of a proscribed religion. It was natural, that thus situated, he should desire to establish himself in some more happy land; where, in every event, he might be free from the persecutions of the established church. Men are not content with the enjoyment, by mere sufferance, either of political or religious liberty. The insecurity of the tenure robs them of half their

(3) See antea page 8th.





enjoyment. In Virginia, which Lord Baltimore had visited shortly before his application for this grant; and where, it is said, he then purposed to establish his residence, he was still met by the intolerant faith of his native land. Although the government of Virginia, upon his declining to take the oaths of allegiance and supremacy, which it had tendered to him and his followers, did not actually exclude him from the province, but had referred the whole matter to the consideration of the English privy council; yet his residence there was still one of mere sufferance. (4) Then it was that his eyes were cast upon the territory along the Chesapeake bay, as yet unsettled, and by the amoenity of its situation, and the fertility of its resources, inviting him to its retreat. Here, if he could but obtain a grant of it from the crown, he might dwell in his own territory and under his own government; and build up in the wilderness, a home for religious freedom. These were the leading views which seem to have operated upon him, in applying for the charter of Maryland; and but for his untimely death, at the moment of accomplishing his wishes, it is probable that he would have removed to the province; and would here have permanently established his family. Hence it may be truly said, from the consideration of the views of its founder, and of the character and objects of its first colonists, that the State of Maryland, as well as the New England states, originated in the search for civil and religious freedom; and the character of the former, is still further consecrated by the fact, that her government, for a long period after the colonization, was true to the principles which laid the foundation of the colony. Her colonists, in escaping from the proscriptions and persecutions of the mother country, unlike those of some of the puritan settlements of the north, did not catch the contagion of the spirit which had driven them from their homes.

*Cecilus Calvert*, although not animated by the same personal views which governed his father, inherited all his energy and general designs, as to the colonization of the province. As

(4) See antea, page 9, note 11; and the facts there stated, and the authorities referred to: which furnish a full account of his visit to Virginia, and of the manner in which he was received there.





Establishment of  
the first colony  
under the char-  
ter of Maryland.

soon as the grant was passed, he commenced his preparations for the establishment of a colony; and originally intended to have accompanied it in person. Abandoning this intention, he confided the conduct of the settlers to his brother, *Leonard Calvert*; whom he constituted his lieutenant general or governor. The colony was soon formed and prepared for embarkation; and on the 22d of November, 1633, it departed from the Isle of Wight, on its voyage to the province. The emigrants consisted of about two hundred persons, principally Roman Catholics; of whom, many are said to have been gentlemen of family and fortune. (5) They reached Point Comfort, in Virginia, on the 24th of February following; whence, after a short stay, they sailed up the Potomac in search of a site for their colony. After having taken formal possession of the province at an island which they called St. Clement's, and

(5) These, and the following details, relative to the equipment, embarkation, and settlement of the colony, are principally collected from a work, published early in the last century, entitled, *The British Empire in America*. Although one of the fullest accounts of the province which has been published and transmitted to us, it contains little else than these details; and a general and imperfect account of the government and condition of the colony, at the period when it was written. The writer, himself, (Mr. Oldmixon,) was sensible of the imperfection of his work as to the history of Maryland, although he pronounces it the most perfect account of that province which had ever been published. He offers an apology for the meagreness of the history, in the fact, that the gentlemen of the province and elsewhere, to whom he had applied for information and assistance, had not furnished it, as those of the other colonies; and concludes with the *consolatory* remark: "Perhaps these gentlemen would be as angry with themselves as with us, when they see how industrious we have been in the histories of those countries that we were fully informed about; and what a figure they make in the British Empire in America: where Maryland is far from being the least considerable portion of it." Even we of this day, can feel some of his indignation; for the work was then practicable, and had they complied with his wishes, we might have had a copious and authentic history of the province up to that period. The work was written in 1708 and 1709, whilst Seymour was governor of Maryland. The royal government then prevailed here; and the materials for its history could have been collected with more facility than during the proprietary government. *Proprietary governments of rich provinces* were never much admired by the crown; and hence it was neither the policy nor the disposition of the proprietaries, to publish the transactions, or reveal fully the resources of their colonies.



having proceeded, according to their estimate, upwards of forty leagues up the river to an Indian town called Piscataway, the governor deemed it prudent to return, in search of a location nearer to the mouth of the river. His intercourse with the savages at Piscataway, although he was kindly received by them, not only there but throughout his progress up the river, had excited his apprehensions as to the location of his colony at so high a point, where in the event of attack it might be cut off from retreat. Returning down the Potomac, they entered one of its tributary rivers, running into it from the north near to its mouth. This river, upon which they bestowed the name of St. George's river, is known at this day by the name of St. Mary's river. It flows into the Potomac between ten and twelve miles above its mouth; and alike most of the other rivers arising in the champaign country adjacent to the bay, at its mouth, and for several miles above it, it is a bold, deep, and wide stream. Sailing up this river about six or seven miles, they came to an Indian town on the eastern side of the river, called "*Yaocomoco*," situated immediately upon the river. The site of this town, the improvements already made around it by the Indians, and the depth and security of the navigation from the Potomac to that point, presented every facility which the governor could desire for the settlement of his colony. His first act was one of justice and humanity towards the aborigines, which presents a striking contrast to the first establishment of the other colonies. What is now termed by some an act of cruelty, was at that day considered an act of almost unexampled humanity. He purchased the town from the Indians, and established his colony within it by their consent. In pursuance of his agreement with the natives, the colony was disembarked at the town of *Yaocomoco*, on the 27th of March, 1634, and took possession of it by the name of St. Mary's. Then and thus landed *the Pilgrims of Maryland*, and then and thus were laid the foundations of the *old city of St. Mary's*, and of *our present State*. (6)

(6) The arrival and establishment of the colony at St. Mary's, were welcomed with general rejoicing on the part of the natives: "The first thing that Mr. Calvert (the governor) did, (says the author of the *British Empire of America*) was to fix a court of guard and erect a store house; and he had not been there many days, before Sir John Harvey, governor of Virginia, came





The colony, which was thus established, was supplied for its establishment, by the kind providence of the proprietary, not only with all the necessaries, but even with many of the conveniences adapted to an infant settlement. Although many of the first emigrants were gentlemen of fortune, he did not, therefore, throw the colony on its resources, and leave it dependent for its subsistence upon the casual supplies of an unreclaimed country, and a savage people. At the embarkation of the colony, it was provided, at his expense, with stores of provisions and clothing, implements of husbandry, and the means of erecting habita-

thither to visit him, as did several *Indian Werowanees*, and many other Indians from several parts of the continent. Amongst other Indians came the king of Patuxent, &c. After the store house was finished, and the ship unladen, Mr. Calvert ordered the colours to be brought on shore, which was done with great solemnity, the gentlemen and their servants attending in arms; several volleys of shot were fired on ship-board and ashore, as also the cannon, at which the natives were struck with admiration. The kings of Patuxent and Yaocomoco were present at this ceremony, with many other Indians of Yaocomoco; and the Werowanee of Patuxent, took that occasion to advise the Indians of Yaocomoco, to be careful to keep the league they had made with the English. He staid in the town several days, and was full of his Indian compliments; and when he went away, he made this speech to the governor: "*I love the English so well, that if they should go about to kill me, if I had so much breath as to speak, I would command the people not to revenge my death; for I know they would not do such a thing, except it were through my own fault.*" British Empire in America, vol. I, 327.

It was an event worthy of celebration; and the manner of its celebration attests most forcibly the liberal and humane policy observed by the colonists of Maryland, in their earliest intercourse with the natives. The artless, untutored savage, had not yet learned to dread the approaches of civilization, as the precursors of his expulsion from the home of his forefathers. He saw, in the colonists, only a gentle and conciliating people, without the power or the will to injure; and gifted with all that could excite his wonder or tempt his desires; and in the fullness of his joy, he hailed their coming as the work of the Great Spirit, in kindness to himself. To the feeble emigrants, it was an occasion for joy, more rational and profound. Preferring all privations to the privation of the liberty of conscience, they had forsaken the endearments of their native land, to cast themselves, in reliance on divine protection, upon all the perils of an unknown country, inhabited by a savage people. They came prepared for the worst; and fancy lent all its illusions to heighten the dangers of the adventure. But the God whom they had trusted was with





tions; and for the first two or three years after its establishment, he spared no expense which was necessary to promote its interests. It appears not only from the petition preferred in 1715, to the English parliament, by Charles lord Baltimore; but also from the concurring testimony of all the historians who treat of the settlement of this colony, that during the first two or three years of its establishment, Cecilus, the proprietary, expended upon

them; and He in whose hand are all hearts, seemed to have moulded the savage nature into kindness and courtesy for their coming. They came; they who were retreating from the persecution of their christian brethren, to be welcomed by the confidence and affection of the savage: and their peaceful and secure establishment in the wilderness, was enough to have called forth grateful aspirations from the coldest heart, and to have put into every mouth the song of joy.

Nearly *two hundred years* have rolled by, since the voices of our forefathers were lifted up in the wilderness, to celebrate the joyous occasion of their landing and peaceful establishment, in this then desert province. The close of the second century since that event, is now near at hand; and why should not the return of the day, which commemorates the landing of these pilgrims, be an occasion of *jubilee* to us? Every nation has had its *festivals*, to recall in pride the recollections of its history, and to fashion and sustain the spirit and character of its people by the example of their ancestors. Yet where shall we find, in the history of any people, an occasion more worthy of commemoration, than that of the landing of the colony of Maryland? It is identified with the origin of a free and happy state. It exhibits to us the foundations of our government, laid broad and deep in the principles of civil and religious liberty: It points us with pride to the *founders* of this State, as men who, for the secure enjoyment of their liberties, exchanged the pleasures of affluence, the society of friends, and all the endearments of civilized life, for the privations and dangers of the wilderness. In an age, when perfidy and barbarity but too often marked the advances of civilization upon the savage, it exhibits them to us displaying in their intercourse with the natives, all the kindnesses of human nature, and the charities of their religion. Thus characterising this colony, as one established under the purest principles, and by the noblest feelings which can animate the human heart; it presents to us, in its after-history, a people true to the principles of their origin. At a period when religious bigotry and intolerance seemed to be the badges of every christian sect; and those who had dwelt under their oppressions, instead of learning tolerance by their experience, had but imbibed the spirit of their oppressors; and when the howlings of religious persecution were heard every where around them, the Catholic and Protestant of Maryland were seen mingling in harmony, in the discharge of all their public and private duties, under a free government, which assured the rights of conscience to all. Conducting us through all the



it upwards of £40,000 sterling. (7) Nor did his care stop here. He governed it with a policy more efficacious than his means, in giving strength and confidence to the colony, and happiness to the settlers. The lands of the province were held up as a premium to emigrants. The freemen were convened in Assembly: and thus made to feel that they were dwelling under their own government. Religious liberty was subject only to the restraints of conscience—courts of justice were established; and the laws of the mother country, securative of the rights of person and property, were introduced in their full operation. The laws of justice and humanity were observed towards the natives. The results of so sagacious a policy were soon perceived. During the first seven years of the colony, its prosperity was wholly uninterrupted; and when the interruption came, it proceeded from causes which no policy could have averted.

The dissatisfaction of the *colony of Virginia* with the dismemberment of its province by the grant of Maryland, and the unsuccessful issue of their efforts to reclaim it, have already

changes in the government and condition of that colony, until that proud period, when it assumed the rank of a free and independent State; it shows us still, a people who knew their rights as freemen, and who had the courage to assert, and the power to maintain them: a people, whose history is without a recollection of slavish submission to call up a blush upon the cheeks of their free descendants. Surely such a *birth-day* of a free people, is worthy of commemoration to the latest period of their existence.

*The landing of the Pilgrims of New England*, has been the burden of many a story, and the theme of many an oration. The very *Rock* on which their feet were first planted, is consecrated in the estimation of their descendants; and its relics are enshrined as objects of holy regard. They were freemen in search of freedom: They found it, and transmitted it to their posterity. It becomes us, therefore, to tread lightly upon their ashes. Yet whilst we would avoid all invidious contrasts, and forget the stern spirit of the Puritan, which so frequently mistook religious intolerance for holy zeal; we can turn with exultation to the *Pilgrims of Maryland*, as the founders of religious liberty in the new world. They erected the first altar to it on this continent; and the fires first kindled on it ascended to heaven amid the blessings of the savage. *Should the memory of such a people pass away from their descendants as an idle dream?*

(7) Chalmers, 208, *British Empire in America*, vol. 1st, 230. 2d Anderson's *History of Commerce*, 476.





Dissatisfaction of the Virginia settlers with the grant of Maryland, and its permanent influence upon the relations between the two colonies.

been described. (8) Yet although the title of Lord Baltimore was fully sustained by the decision of the crown, and its injunctions to the government of Virginia, to keep up a good correspondence with his colony; the circumstances under which it was obtained, were yet fresh in the minds of the Virginia settlers, and created heart-burnings and jealousies, which were for a time prejudicial to the interests of both. Had no such causes of discord existed, their common origin, their connexion with a common country, and the privations and dangers common to both settlements, surrounded as they were by the savages, would soon have produced union and harmony in their efforts. The dangers of either would have been the dangers of both; and the result would probably have been, the formation of a confederacy as distinguished in colonial history as that of "*the united colonies of New England.*" (9) The idea of union and harmonious effort once made familiar to them in their infancy, they would most probably ever afterwards have clung together in every moment of difficulty or oppression. Yet although they were adjoining colonies, claiming the same liberties, open to the attacks of the same internal enemy, having the same navigable outlet, and in general raising the same staple commodities, their history is marked by none of those unions of power, and communications of assistance, which are so conspicuous in the transactions of the New England colonies. It exhibits nothing but the friendly and commercial intercourse, common to adjoining provinces in a state of peace. The primary causes of this may be traced to the dissatisfaction which the grant excited; and in the progress

(8) See *supra*, page 10.

(9) This confederacy was formed in 1643, and originally embraced the colonies of Massachusetts, New Plymouth, Connecticut and New Haven. It was productive of the happiest results, by preserving harmony amongst the colonies, and concentrating their energies for defence against the wily enemies by whom they were surrounded. As the *archetype* of the system of confederation adopted by the colonies during the revolutionary war, these articles of confederacy are full of interest to the explorer of our national history. They may be seen at large in 2d Hazard's State Papers, 1 to 6; and a synopsis of them is given in 1st Pitkin's U. States, 50, and 1st Marshall's Life of Washington, 137.





of a few years, the growth and permanent establishment of the two colonies, and the differences in their governments, institutions, and manners, removed most of the inducements which were calculated to inculcate the idea of such an union.

The dissatisfaction of the Virginians did not spring entirely from the loss of territory to their colony. They had amongst them an agitator, bold, energetic, and clamorous of his private griefs, in which not only the colony, but even the government of Virginia, in some measure participated. *William Clayborne*, whose name is identified with the rebellion of 1645-46, and with almost every act of hostility to the province of Maryland, during the first twenty-five years of its settlement, has already been introduced to the notice of the reader, as the founder of the settlements on Kent Island, which existed anterior to the charter of Maryland. The character and temper of that individual, the circumstances under which his settlement was made, and the causes of his deep-rooted hostility to the province, have been unfolded. Deprived of his settlement, expelled the province, and attainted, he sought refuge in Virginia, and threw himself upon the protection of Harvey, its tyrannical governor; who was believed to have connived at, if not assisted his acts of violence in Maryland. There he was followed by commissioners deputed by the governor of Maryland to demand his surrender; but Harvey, too critically situated to afford him open countenance, yet declined compliance with the demand, and transmitted him and his case to England, for the adjudication of the English privy council. There arrived, Clayborne again assumed the attitude of a complainant, and prayed the restoration of his settlements, and the grant of a new and more extensive territory within the limits of Maryland. The results of his petition have been detailed. He was unsuccessful in his attack upon the claims of Lord Baltimore; and now that force, fraud, and complaint, had all failed in effecting his purposes, there remained to him but the spirit of deadly animosity towards the colony, waiting only the opportunity of revenge. (10) The circumstances

This dissatisfaction increased and the tranquility of the province first interrupted by the intrigues of Clayborne.

(10) For the origin of Clayborne's settlements, and the results of his various efforts to regain them, see *supra*, pages 6th to 8th, and 14th to 18th.



of the times soon presented that opportunity. The ferments of the *parent country* were rapidly approaching their acme; and the spirit of insubordination and anarchy, which they brought in their train, soon extended itself to the colonies. Royal and parliament parties were already forming in them, to react in reference to their colonial governments, the scenes of the revolution which was going on in England. Clayborne espoused the parliament cause, for which he was well fitted, both by his natural temper, and his deep sense of his unredressed wrongs.

His first efforts, however, were made under the cover of Indian grievances. The intercourse between the colonists and the Indians had hitherto been of the most friendly nature; yet the engrossing effects of the settlement upon the possessions of the latter, were inevitable. They found their own consequence in the land diminishing; and the general liberty to purchase their possessions, enabled the colonists to obtain them often for petty compensations, which the natives were prompted to accept, by the wants or temptation of the moment. These purchases were gradually driving them from the graves and hunting grounds of their forefathers; and come as this might, the Indian spirit could not but grieve over it. Clayborne found it a ready minister to his vengeance. He succeeded in persuading the Indians, that the colonists of Maryland were not Englishmen, nor the brethren of Virginians, whose power they either respected or feared; but Spaniards and enemies, who would soon drive them from the land; and at length, in the beginning of the year 1642, their indignation, fanned by his persuasions, broke out into open war, which endured for some time, and appears to have produced considerable expense and distress to the province. (11)

Peace had scarcely been restored, when Clayborne came in person, as the leader of rebellion in the colony. The distractions of the times, consequent upon the movements of the people against the crown in the mother country, provided him fit agents and associates. Of these, the most prominent was Richard Ingle, whose name has

Clayborne and Ingle's rebellion, in 1641.

(11) British Empire in America, vol. 1st. 323; Chalmers, 216; and Act of 1642, chap. 54.





ever since been associated with that of Clayborne, in giving a name to the rebellion which they excited. One of the results of Clayborne and Ingle's rebellion, as it is called, was the destruction or loss of the greater part of the records of the province; and those which remain to us, neither show us in what manner this rebellion was fomented and accomplished its triumph, nor give us any insight into the conduct and administration of the confederates, whilst they held the rule of the province. From Clayborne's known character as an adherent to the parliament, and the fact of Ingle's previous flight from the province as a proclaimed traitor to the king, it seems probable that the insurrection was carried on under the name, and for the support of the parliament cause. The records of that day inform us only, that it commenced in the year 1644: that early in the year 1645 the rebels were triumphant, and succeeded in driving the governor, Leonard Calvert, from the province to Virginia: and that the government of the proprietary was not restored until August, 1646. If the representations made by that government, after its restoration, be correct, the administration of these confederates, during their ascendancy, was one of misrule, rapacity, and general distress to the province; and this seems quite probable, from the fact of their early expulsion from it, notwithstanding the triumphs of the parliament party in England. Their dominion is now remembered, only because it is identified with the loss of the greater part of the records of the province before that period. (12)

Tranquillity was restored by a general amnesty, from which only Clayborne, Ingle and Durnford were excepted; (13) and for some years after the restoration, the colony was wholly occupied in re-establishing the affairs of the province, and rescuing it from the distresses which had been occasioned by the rebellion. Unlike many of the other colonies, its course towards the contending parties in England, was one of neutrality. Its transactions before the execution of Charles I. are silent as to the revolutionary

The course of the government and colony of Maryland, with reference to the constitution of the mother country.

(12) Preface to Bacon's edition of the Laws of Maryland, 2d Burke's Virginia, 112; Chalmers, 217; Assembly Proceedings from 1636 to '57, from page 341 to 353.

(13) Council Proceedings from 1636 to 1657, 168 to 184.





proceedings in the mother country. The course of the colonists was at once prudent, and justified by their own condition. Their government was removed from the oppressions of the crown, which had excited the discontents in England; and the proprietary administration of it was full of gentleness and benevolence. The recitals of the acts of Assembly of that period, overflow with expressions of gratitude to the proprietary, for his kindness to the colony; and their enactments contain more substantial evidence of that gratitude, in the voluntary grants of revenue. If they had even been predisposed to revolutionary movements, the short yet baneful experience which they had of them in the results of Clayborne and Ingle's rebellion, and the contrast between their administration and that of the proprietary, were sedatives sufficient to allay the spirit. They had no motives for entering into a revolution excited by oppressions they had never felt, which, in its excesses, might ultimately prostrate even their cherished government and institutions, as a part of the old order of things. At the same time, now that the ascendancy of the parliament had become complete, an open adhesion to the cause of the crown would only have brought down destruction upon their government, and jeopardy to their liberties.

The course of neutrality was therefore to them the course of discretion; and it appears to have been invariably observed during the reign of Charles I. Immediately after his death, this course was for a moment departed from by a single act of loyalty, which the proprietary had reason to regret for many years. On the 15th of November, 1649, the accession of king Charles II. was formally proclaimed in the province, by a proclamation issued by Greene, who was the acting governor, under a commission from governor Stone, then temporarily absent. (14) Stone soon returned and resumed the government; and this most unwise and aimless act on the part of Greene, was not followed by any measures calculated to give offence to the dominant party in England: yet the memory of the act remained.

(14) See this proclamation in Council Proceedings, from 1636 to 1657, page 321.



As soon as the triumph of the Commonwealth cause was consummated by the death of the king, the parliament directed its attention to the subjugation of the colonies which had been disaffected to that cause. Amongst these, *Virginia* had been conspicuous for her loyalty, and was selected as one of the first victims.

Proceedings of the Parliament and Council of State for the reduction of the Colonies adhering to the royal cause.

In October, 1650, an ordinance was passed by the parliament, prohibiting trade specially with *Virginia*, *Barbadoes*, *Bermudas*, and *Antigua*, and declaring them to be in a state of rebellion. The parliament asserted its right of jurisdiction over them, as colonies established "at the cost and under the authority of the nation, and settled by its people:" and for their reduction, it authorised the council of state to despatch commissioners with a fleet, to compel the obedience of all who stood in opposition to the authority of parliament. (15) *Maryland* was not mentioned in the ordinance, and does not appear to have been within the contemplation of the powers conferred by it. She had never arrayed herself in direct opposition to the parliament authority, and had committed no act of rebellion to place her in the predicament described. But the finger of her "evil genius" is visible in the commission issued under this ordinance by the council of state. That commission was issued in September, 1651, to captain Robert Dennis, Richard Bennet, Thomas Stagg, and captain *William Clayborne*: and the instructions which accompanied it, authorised them, upon their arrival with the fleet at *Virginia*, to use their best endeavors "to reduce all the plantations within the Chesapeake bay to their due obedience to the parliament of the commonwealth of England." Ample authorities accompanied this general instruction, to render it effectual. They were empowered to offer pardon to all voluntarily submitting, and to use force to reduce the unwilling: and they were even authorised to give freedom to the servants of rebellious masters, upon condition of entering as soldiers into the service of the commonwealth. Upon the reduction of the colonies, they were directed to administer to the inhabitants an oath of allegiance to the commonwealth, and to cause all process to

(15) First Hazard's Collection, 556; 2d, Anderson's History of Commerce, 546; Chalmers, 221.





be issued in the name of the Keepers of the Liberties of England, by the authority of parliament. (16)

Virginia was finally reduced by them in March, 1651; (17) and their attention was now directed to the government of Maryland.

Like poor Tray of the fable, she was to suffer for her proximity to Virginia. Clayborne, who had now the power, wanted no excuse to justify its exercise.

Submission of  
the proprietary  
government to  
the parliament  
commissioners.

He and the other commissioners assumed the ground, that whatever had been the conduct of the colonies, an express submission and recognition by them of the authority of parliament, was necessary to shelter them from the powers of the parliament commission: and this was accordingly required of Stone, who was still the governor of Maryland. Stone did not at once accede to their demands; and they immediately issued a proclamation, divesting him of his government, declaring void all the commissions of the proprietary, and constituting a board of six commissioners, for the government of the province, under the authority of parliament. (18) Before any acts of force were resorted to, to compel obedience to this proclamation, Stone, finding all further opposition useless, effected an arrangement with the commissioners, under which he and three of his council were permitted to retain and exercise their powers, saving to them their oath of fealty to the proprietary, until the pleasure of the commonwealth government, as to the ultimate disposition of the province, should be known. This arrangement answered the purposes of both. (19) By his reservation of the proprietary rights, the governor relieved himself from the responsibility of a voluntary surrender; and the commissioners escaped from the hazard of an unauthorised or at least doubtful exercise of power.

So stood the government until July, 1654. In the intermediate period, it appears to have been administered by Stone with

(16) See their commission and instructions in 1st Hazard's State Papers, 556.

(17) 2d Burke's Virginia, 81.

(18) See this proclamation of 29th March, 1652, in Council Proceedings from 1636 to 1657, 26, 23 and 29.

(19) Council Proceedings, 1636 to 1657, 269 and 270. The submission of Stone and the arrangement between him and the parliament commissioners, under which he was permitted to retain his power as governor, took place in June, 1652.





Usurpation of the government by these commissioners, in the name and under the authority of the protector. fidelity to the commonwealth, and to have kept pace with all the revolutions in the home administration. It was indeed alleged against him, that in 1653 he had attempted to reintroduce the proprietary government, by requiring the inhabitants to take the oath of allegiance to it. (20) If this be true, it was not incompatible with the arrangement under which he was permitted to retain his power. That arrangement manifestly contemplated the reservation of the proprietary dominion, until the will of the English government was known: and by the latter, no act had yet been done to divest it. *Cromwell* had even less reason than the parliament, to be dissatisfied with Stone's administration; for the latter, as soon as he received certain intelligence of Cromwell's elevation to the protectorate, voluntarily recognised and proclaimed him as protector. (21) Neither the records of the province, nor the allegations of his enemies, furnish any evidence of a falling off from the allegiance which he had thus professed. But Clayborne was still there, the dominant spirit in the direction of the colonies: and to him the vision of the proprietary government, sustained by the approbation of the protector and the people, was as that to Haman of Mordecai the Jew sitting at the king's gate. To overthrow it, the usual expedients of power were resorted to. The charge of defection could not be sustained by acts; and it was therefore only necessary to allege unexecuted and unmanifested intentions, always easy to be charged, and difficult to disprove. Alleging these, they claimed the privilege of resettling the government of Maryland; and Stone, being without the means or hope of effectual resistance, at once surrendered his powers without a struggle. His submission and proffer to administer the government, in the name and under the authority of the commonwealth, were all unavailing. He was utterly divested of it; and its administration was confided to a board consisting of ten commissioners, deriving their appointment from Clayborne and his associates. (22)

(20) See Hazard's Collection, 626.

(21) This proclamation of Cromwell, as protector, of 6th May, 1654, is recorded in Council Proceedings, from 1636 to 1657, 303.

(22) The commissioners thus appointed were, captain William Fuller, Richard Preston, William Durand, Edward Lloyd, captain John Smith, Mr.



Stone now resolved upon resistance; but the inclination came too late. He succeeded in raising a force of about two hundred men; and actual hostilities were commenced. The contest was unequal. The commissioners were backed by all the powers of Virginia which was now completely under their control; and by all the strength, which the general ascendancy of the commonwealth power was calculated to impart. An engagement soon took place near the Patuxent, in which Stone was utterly defeated and taken prisoner. He was doomed to death; but such was the respect and affection entertained for him even by the opposing forces, that the very soldiers, who were detailed to carry the sentence of death into execution, refused to perform the service. This, and the general intercession of the people, procured a commutation of the sentence into imprisonment, which was continued with circumstances of severity, during the greater part of the protectorate administration. (23) The province being now in the undisputed possession of the commissioners, an Assembly was convened, by which their authority was fully recognized. In the course of the next year, the protector, when informed of the proceedings of the commissioners, gave his sanction to their acts, and to the government which they had established.

The dominion of the proprietary seemed now to be at an end; and in the moment of its downfall, the stale claims of Virginia to his territory, were again revived and urged upon the protector, with every circumstance of objection to the charter. On the other hand, the proprietary was as urgent in his requests for the restoration of his province; and to counteract these, the cause of the Virginia claims was espoused and advocated with great earnestness by Bennet and Matthew, two of the commissioners then administering the affairs of that colony. In opposition to the restitution, several documents were transmitted by them to the protector,

Revival of the  
Virginia claims  
in opposition to  
the restitution to  
the proprietary.

Lawson, John Hatch, Richard Wells, and Richard Ewen; of whom Fuller, Preston and Durand, to be the quorum. See their commission in Council Proceedings, 1636 to 1657, 306 to 309, and Land Records, Liber I, 618 to 621.

(23) 1st Hazard's State Papers, 621 to 626. Preface to Bacon's edition of the Laws.





which embodied every possible objection to the rights of the proprietary, and are as conspicuous for their ingenuity as their malignity. In these, the very origin of the charter was assailed, under the allegation that it was obtained by the false representation that the territory granted was *uncultivated, and inhabited only by savages*; and the story of Clayborne's wrongs was portrayed in the most vivid colors. The proclamation of Charles II. the course of Stone before his final submission, and his subsequent efforts to retain the government by force, were detailed with every coloring calculated to impress the truth of their general allegation, "That the proprietary, if restored, would be as ready to oppose his highness the protector, as he ever had been to slight and oppose the authority of parliament, which he hath manifestly and boldly done, and that with a high hand." The supposed fanaticism of the protector was approached, with the insidious objection to the religious toleration, which had ever existed under the proprietary government, and was incorporated with its laws and institutions. But all of these objections were feeble, when compared with the political reasons advanced by them to inculcate the necessity of *union*. They are worthy of preservation for the policy which they urge. "The peace and common good of these plantations (say they) require, that they should be united and kept under one government, whereby dissensions, quarrels, and cutting of throats, likely continually to arise between such near plantations, will be prevented: his highness's authority established; trade encouraged; the excessive planting of tobacco restrained, so as to make way for the more staple commodities, such as silk, &c. the running away of criminals and debtors checked; and the whole strength against the common enemy, the Indian or any other enemy, the more readily conjoined upon all occasions." (24)

Cromwell's fanaticism was always the dress of the occasion; and it was laid aside, whenever it interfered with his enlarged

(24) See their letter and the several documents transmitted with it, containing these objections, in 1st Hazard's Collection, 620 to 630. In the reference given to these papers above, page 14, it is erroneously printed as a reference to the 2d vol.





Course of the protector with reference to these conflicting claims to the province.

views of public policy. Urged by Baltimore's pretensions on the one side, and the Virginia claims on the other, he had, as early as January, 1655, in his letter sanctioning the assumption of the government, specially enjoined it upon the commissioners of Maryland, to preserve peace and prevent all differences between the plantations of Maryland and Virginia in relation to these claims; and to leave them wholly to the determination of the council at home. (25) The subject of these conflicting claims had previously been referred by him to the lord commissioners, Whitlocke and Widdrington; and their report was referred to the committee on trade and plantations. By this committee, a report was made on the 16th September, 1656, which appears to have sustained the claims of Lord Baltimore; and it was in reference to and in opposition to *this report*, that the above mentioned objections were preferred by Bennet and Matthew. (26) Either from this opposition, or from the policy of the protector, in retaining the proprietary to his interests, by keeping his rights in a state of dependance, this report of the committee of trade was kept open for future determination. (27)

Yet the proprietary seems to have expected a speedy decision in his favor; and in the event of delay, to have resolved to regain his province by force. The condition of affairs there, offered hopes of success. Even in the face of the protectorate dominion, there was at all times a large party in Maryland, attached to his government, and devoted to his person and interests. His government had never been characterized by oppression. It had fallen without a crime, before the ambition of leaders, not bound to the inhabitants of the province, either by the ties of interest or affection. The revival and support of the Virginia claims by the prominent amongst the commissioners, was calculated to arouse the pride and indignation of persons of all parties. Even after the sup-

Condition of the province favorable to the proprietary claim.

(25) 1st Hazard, 594.

(26) Council Proceedings, Liber II II 10 and 11; 1st Hazard, 620.

(27) Council Proceedings, II II 10 and 11; which recite the proceedings of the protector, and refer to this report of the committee of trade.



pression of Stone's rebellion, there were many persons in the province, who openly adhered to the interests of the proprietary, and advocated the restitution of his government.

Amongst these was conspicuous *Josias Fendall*, who was destined to play a prominent part in the affairs of the colony; although entirely unknown in them, before the establishment of the protectorate government. The

Life and character of Josias Fendall.

transactions of the province exhibit him to us for the first time in October, 1655, when he was brought in custody before the provincial court, charged with having disturbed the government under pretence of a power from the late governor Stone; and was then, by his own consent, remanded to prison, to remain there until the protector should finally determine as to the government of the colony. (28) In the next notice of him, we find a record of an oath purporting to have been taken by him, by which he engaged, that he would neither directly nor indirectly disturb the existing government until the protector's determination; (29) and the very next occasion exhibits him as an open insurgent against it, acting under a commission from the proprietary, as governor of the province. At this day, the character of this individual can be collected only from the acts with which he is identified; and these mark him as "fit for treasons, stratagem and spoils." His treachery is conspicuous in almost every transaction with which he is connected. The province was surrendered to him by Cromwell's commissioners, under a treaty, which contained an express stipulation for the security of the acts and orders passed during the defection; and the very first act of his administration was not merely to declare them void, but also to direct, "that they be razed and torn from the records." In return for the distinction conferred upon him by the proprietary, by selecting him as governor at a period when he appears to have had but little note in the colony, he selected the earliest opportunity after the restoration, for the treacherous surrender of his rights. Yet all his acts prove him at once bold and intriguing, and as such, well fitted to conduct a revolution.

(28) Land Records, Liber 3, 158 and 159.

(29) Council Proceedings, 1636 to 1657, 314 and 315.





Fendall received his commission, as governor, from the proprietary, in July, 1656; (30) and armed with this, he soon succeeded in exciting a rebellion against the commissioners. The records do not inform us, in what manner he procured his release from the imprisonment, to which he was subject in 1655 by his own consent; but from the record of his oath of adhesion shortly afterwards, there is every reason to believe that he was then discharged. From that period until the restoration of the proprietary government in 1658, the existing records do not furnish us the means of tracing his operations in opposition to the protectorate government. We learn from them only, that he succeeded in exciting a rebellion, which was attended with considerable distress and expense to the province; (31) and that he was never finally subjugated by the commissioners. In the latter part of the year 1657 and the beginning of 1658, there seems to have been a kind of *divided empire* in the province; the commissioners holding the courts and administering the government at St. Leonard's; and Fendall and his council sitting and acting as such at the city of St. Mary's. Through the interference of a common friend, and to put a stop to the distresses arising from this state of things, an arrangement was entered into in England, in November, 1657, between Lord Baltimore, and Bennet and Matthews (the same commissioners who had been so vindictive in their opposition to his rights;) under which it was agreed that the province should be surrendered to the former, upon certain conditions, for the indemnity of those who had acted in opposition to him. This being communicated by the proprietary to Fendall, he immediately addressed letters to Fuller, Preston, and others of the protectorate commissioners, inviting an interview at *St. Leonard's* in the March following, for the purpose of carrying this agreement into effect, and perfecting the treaty of surrender. The interview accordingly took place at St. Leonards, on the 20th of March, 1658,

(30) His commission dated 10th July, 1656, is recorded in Council Proceedings, Liber H H, 7.

(31) Ordinance 8th of the Acts and orders of September, 1657, and Council Proceedings, H H, 10 and 11.





(new style) when this was accomplished, and the province formally surrendered to Fendall as the proprietary's governor. (32)

Fendall being now in full possession of the government, he was prepared to react the part which Cromwell had played in the administration of England. Under the sanction and direction of Parliament, Cromwell had accomplished complete success for the commonwealth cause: and then he turned the parliament out of doors. Fendall, in the name and under the authority of the proprietary, was now the undisputed ruler of the province; and his next move was to kick away the ladder by which he had climbed to power. At the Assembly convened in February, 1659, the lower house, as emulous as Fendall of revolutionary examples, in a message transmitted to it by the upper, claimed for itself to be the Assembly and highest court of judicature in the province, without dependence on any other power; and demanded the opinion of the upper house upon this claim. This was a pretension, which struck at the very existence of the upper house, and of the most essential powers of the proprietary; and although upon the face of the proceedings themselves, it appears to be one originating merely in the ambition of the lower house, and made *in invitum* as to Fendall and his council, the memorials of that day give a very different character to the transaction. It is represented, on all hands, to have been a scheme concocted by Fendall, and promoted by his adherents in the house, only to give a color to his designs; and his course as to the demand, fully sustains these representations, and illustrates his policy. In their reply to this message, the upper house desired to know whether the lower house, in making this pretension, considered themselves an Assembly without the governor and upper house, and as such, independent of the proprietary. The house now asked a conference, which was granted; and the designs of Fendall were at length unmasked. He at first affected some little reluctance; but he, and Gerrard and Utye, two of his council, soon came into the measures of the lower house. Many of the members of the

(32) Council Proceedings, II II, 10 and 11. The terms of the treaty of surrender have already been described. Supra page 15, note (17.)



upper house still proving refractory, the lower house, headed by its speaker, repaired in a body to the upper, and announced their determination not to permit its members to sit longer as an upper house; but at the same time accorded them the privilege of taking seats in the lower house. The lower house agreeing, that the governor should be its president, with the reservation of the right to adjourn or dissolve itself, the upper house was then dissolved by Fendall. Carrying out his intentions, he now surrendered to the lower house his commission from the proprietary, and accepted from them a new commission for himself and his council; and to give stability to the new order of things, an act was passed declaring it felony to disturb the government as established by them, and a proclamation was issued by Fendall, commanding the inhabitants to recognize no authority, but that which came immediately from his majesty, or the grand Assembly of the province. (33)

The rule of this *commonwealth party* of the province was of short duration. The proprietary adopted speedy and efficient measures for the restoration of his government. He Proprietary power re-established by governor Philip Calvert, in November, 1669. procured from King Charles, who was just restored to the throne of England, a general letter of instruction, enjoining all the officers and inhabitants of the province to assist him in the re-establishment of his jurisdiction; and a similar command of assistance addressed to the government of Virginia. He also commissioned as governor, his brother Philip Calvert, to whom he gave authority to proceed against the insurgents, either in the courts, or by martial law, at his pleasure; and instructed him on no account to permit Fendall to escape with his life. The government of Virginia came cheerfully into the commands of the king, and proffered Calvert all necessary assistance. He however experienced no difficulty in assuming the government, which was abandoned by Fendall after a fruitless effort to excite the people to opposition. (34) The first act of Calvert, after the assumption of the government, was to proclaim King Charles II.; (35) for although, at the revolutionary Assembly of 1659,

(33) Journals of Assembly from 1659 to 98, 5th to 7th page. Preface to Bacon's Edition to the Laws of Maryland.

(34) Council Proceedings from 1656 to 1668, Liber II H, 74 to 82.

(35) Council Proceedings, II H, 76.





Fendall and his adherents had professed all due submission to the authority of the restored monarch, their inclinations were otherwise. No public act had been done to announce his restoration; and one of the earliest acts of Fendall and his council had been, to proclaim Richard Cromwell as protector, as soon as the intelligence of his father's death was received. In conformity to the proprietary's instructions, governor Calvert proclaimed a general indemnity to all, except Fendall and Hatch, for whose apprehension proclamations were immediately issued. In a few days, Fendall came in voluntarily, and submitted himself to the discretion of the government; and notwithstanding his gross treachery, and the express injunctions of the proprietary not to permit him to escape with his life, he was only imprisoned for a short period; and was discharged from all the penalties of the sentence passed upon him by the provincial court, except the deprivation of the privileges of voting and holding office. He lived to repay this humanity many years afterwards, by attempts to excite another rebellion in the province. (36)

The proprietary government was now firmly re-established, and the province restored to tranquillity, which it enjoyed without interruption for many years afterwards. In the beginning of the year 1662, the proprietary sent out to the province, as its governor, his son and heir apparent, *Charles Calvert*, who continued to reside in the province and administer its government until the death of his father, except during one or two occasional absences of short duration. The transactions of the government during this period, in establishing its boundaries, and in establishing or remodelling its institutions, belong to the history of the grant or of the provincial institutions; and have been, or will hereafter be, considered in connexion with the particular subjects to which they refer. Besides these, this interval presents no events which are important in the elucidation of the political history of the province.

*Cecilus Lord Baltimore*, the first proprietary of Maryland, died on the 30th of November, 1675; and was succeeded in his ti-

(36) The various proceedings relative to Fendall may be seen in Council Proceedings, 1656 to 1668, Liber II II, pages 74, 76, 79 to 82 and 89.





bles and estate in the province, by his son and heir,  
Accession of  
Charles Calvert,  
as proprietary. *Charles Calvert*, the then governor of Maryland.

As soon as he was notified of his accession, the new proprietary, intending to return to England, immediately convened an Assembly. At this Assembly, the legislation of the provinces was rescued from the confusion and obscurity which had characterised it for some years, from the want of a regular expression of the proprietary will upon the acts from time to time passed, and from the enactment, during that period, of various acts upon the same subject, and tending to the same purpose. A general revision of the laws then took place, under which, those then in existence and proper to be continued, were definitely ascertained. (37)

The government of the province was then put in commission, to be administered by a deputy governor, in the name of the proprietary's infant son, *Cecil Calvert*, as nominal governor; and

the proprietary departed for England. There arrived, he found himself and his government the subject of complaint to the crown. The detail of these complaints is not necessary for our purpose. He departs for  
England: in 1676,  
triumphs over  
the objections to  
his government,  
and returns to  
Maryland in  
1680.

Representations had been made by some of the resident clergy in the province, to the heads of the established church in England, which drew a most hideous picture of the immoralities of the colony, and were preferred by the bishop of London to the committee of trade and plantations, as exhibiting grievances requiring redress. (38) The remedy proposed

(37) This was accomplished by the acts of 1676, chap. 1st and 2d.

(38) The principal representation upon which the complaint was predicated, is contained in a letter written from Patuxent, in Maryland, by the Rev. Mr. Yeo, to the archbishop of Canterbury, in May, 1676. "The province of Maryland, (says he,) is in a deplorable condition for want of an established ministry. Here are ten or twelve counties, and in them at least 20,000 souls: and but three Protestant ministers of the church of England. The priests are provided for, and the Quakers take care of those that are speakers; but no care is taken to build up churches in the Protestant religion. The Lord's day is profaned. Religion is despised, and all notorious vices are committed: so that it is become a Sodom of uncleanness, and a pest house of iniquity. As the Lord Baltimore is lately gone for England, I have made bold to address this to your Grace, to beg that your Grace would be pleased to solicit him for some established support for a Protestant ministry." Chalmers, 375. Now here is a most



indicated the cause of complaint. The clergy wanted an establishment and endowment of lands; and their piety was shocked at the temporal emoluments in the possession of the Catholic priests of the province. The answer of the proprietary was easily made. He referred to the permanent law of the province, tolerating all christians, and establishing none; and to the general impracticability of procuring, through the Assembly, the exclusive establishment of any particular church; and he was released from the subject by the injunction, to enforce the laws against immorality, and to endeavor to procure a maintenance for the support of a competent number of the clergy of the church of England. (39) The complaint of the Virginians, that Maryland had not aided in the protection of her frontiers, was reported to be utterly groundless; and thus triumphant over his enemies, in February, 1680, (new style,) the proprietary returned to the province, and resumed the personal administration of its government. The attempts of Fendall and Coode, in the following year, to excite sedition in the colony, were attended with no consequences at that period, which deserve special consideration. They met with no correspondent spirit on the part of the people, and were instantly checked by the arrest and conviction of these notorious agitators. They derive their consequence, from their connexion with the events which led to the Protestant revolution, and with the character of one of these personages, who was destined to be the leader of that revolution: and will hereafter be adverted to, in illustration of its causes and objects.

The proprietary remained in the province until 1684, administering its government with a parental care for the rights and interests of his people, which secured for him general respect and affection. The events now occurring in the mother country, were already ripening the jealousies of the people of

frightful picture of the immorality of the province: and the whole grievance is the want of an established clergy; and the remedy, its establishment. How unlike his divine Master, who did not wait for an established support to go forth on his mission of grace. "*Having a care for the body,*" is too often all that is meant by "*having the care of souls.*"

(39) Chalmers's Annals, 365.





The government administered from this period until May, 1684, by the proprietary in person; and character of his administration.

England for their liberties and their religion. The cry of "*no Popery*," was already abroad to excite apprehension; and vague surmise and suspicion as to the ulterior designs of the crown, were infusing themselves into the public mind. The acts of the government, and the succession to the throne in prospect, were well calculated to sustain and increase these, and to prepare the public energies for the crisis which was rapidly approaching. Extending to and diffusing themselves amongst the colonies, (which were always tremblingly alive to the movements at home,) by their travel, these jealousies lost none of their power to alarm and influence, and found ready recipients in the breasts of the colonists, yet smarting under the recent restrictions of their trade, and ever apprehensive of the destruction of their chartered liberties. In Maryland, subject as she was to the dominion of a Catholic, yet peopled principally by Protestants, they were calculated to produce peculiar effect. Yet in the midst of all this, the personal government of the proprietary, notwithstanding the occasional differences between him and the Assembly, was always alluded to in the Assembly transactions of that period, in terms dictated by the most grateful affection: and his departure excited the general regrets of his people.

That departure appears to have been occasioned by the jeopardy, in which his proprietary rights were now placed by the

Danger to his government from the inclinations of the crown.

temper of the crown. We have already adverted to the jealousy and aversion, with which it generally regarded the independence of the charter and proprietary governments, and the exemption of their rights and revenues from its discretionary control. These governments, for the most part, originated in the personal attachment of the king to the original grantees, or were granted to subserve some temporary humor, or to conciliate, from motives of policy, some temporary discontent. Springing thus from the favoritism or impulse of the moment, after the temporary causes which gave them existence subsided, the control which the ties and securities of these charters imposed upon the crown, was alike that of sullen wedlock, when the golden link of affection has become the chain that fetters. In those days, the king enjoyed facilities for release from his obligations, even beyond those of the modern victim of marriage. If





other causes were wanting, his pliant courts could find a sanction for divorce from the charter restrictions, in the knowledge of his will. The writ of *quo warranto*, once issued, never failed to accomplish its purposes. It was as true as the Indian's arrow; and the colony, which saw it impending, never contemplated its defeat, except by sturdy reliance upon itself, or by propitiating the favor of the monarch.

The proprietary knew this full well; and it now required all his vigilance to avert its application to his own rights. He

The jealousies of the crown enhanced by the opposition to the restrictions imposed upon the trade of the colony. does not appear to have enjoyed any peculiar favor, either with king Charles II. or his successor. Too little of the libertine and sensualist for the former, and yet too liberal and tolerant in his religious principles for the latter, he rested for his protection

solely, upon the chartered sanctity of his rights, and the pleading virtues of his wise and liberal administration of them. To both of these monarchs, such claims were "*as dust in the balance*," when weighed against their own selfish views, or the suggestions of their capricious tyranny. Complaints were continually poured into the ear of king Charles, relative to the Catholic partialities of the proprietary administration. The sources from which they came, entitled them to but little respect; and if they were even worthy of it, the refutation of the charge was triumphant. The proprietary referred to the cherished laws and institutions of the colony, coeval with its existence, which permitted the freest exercise of their religion to every christian sect. He transmitted to the mother government full lists of the officers of the province, from which it was manifest, that its offices were distributed without reference to religious distinctions; and that in fact the military power of the colony was almost exclusively in the hands of the Protestants. (40) In reply to this, the exemplary Charles, whose whole reign was at war with every thing that gives efficacy and purity to religion, gave his commentary upon religious liberty, by ordering the proprietary "to put all the offices into the hands of the Protestants." Yet no one ever suspected Charles, of peculiar attachment to the Protestant or any other religion; and the secret of

(40) See Chalmers 369, and the reference given in Note 27, to the papers in the Plantation office, which, as he says, fully sustain the truth of this remark.



his injunction lay deeper. The system of restrictions upon the colonial trade, the full establishment of which is identified with his reign, was his most favorite policy; and the opposition which it encountered in the colonies, only endeared it the more to him. We have, elsewhere, described the character and objects of that system, and the reception with which it met in Maryland. The proprietary's course, notwithstanding the provocations he received from the king's officers, did not directly deny, as did that of some of the other colonial governments, the validity of the system; although his charter had infinitely stronger claims to entire exemption, than any other. He opposed what he considered its abuses; and in so doing, he called down upon himself from the crown, its severest reproaches. In one of Charles's letters to him, after charging upon him acts of obstruction, which prevented the collection of the tobacco duty imposed by the statute 25th, Charles II. chap. 7th, to the amount 'of £2500 sterling, he gave the proprietary a gentle caution, the alarming force of which could not be misunderstood. "Although, says he, your proceedings, in obstruction of our officers and in contempt of our laws, are of such a nature, as that we might justly direct a writ of *quo warranto* to be issued out; we have, nevertheless, out of our great clemency, thought fit, for the present, only to require the commissioners of our customs, to charge you with the payment of the said sum, and to cause a demand to be made from you for the same." (41)

Such symptoms of dissatisfaction, aggravated as they were by the representations from time to time transmitted to the king by his officers in the province, required the proprietary's attention to his interests at home; and therefore putting the government in commission in May, 1684, to be administered in the name of his infant son, *Benedict, Leonard Calvert*, as the governor, he departed for England. He was destined never to return to the province. He arrived only to witness the accession of king James II. and to encounter yet more serious designs upon his rights. Professing the same religion with the new monarch, and receiving and proclaiming the knowledge of his elevation with joyfulness, he had

(41) See this letter in Chalmers 377, note 30, chap. 15, dated 12th August, 1682.





reason to expect some degree of royal favor. Yet although members of the same church, James's religion and his were of very different casts. His principles, as manifested in his provincial administration, were full of benignity and toleration—Those of the monarch, exhibited only that cold, selfish and contracted bigotry, which mistakes its own malignity, restlessness under control, and vindictiveness towards all opposition, for the energies of religion; and they carried with them, a spirit yet more averse to the political liberties of his people.

The general designs of this king against the liberties of the English people, and his peculiar opposition to the charter liber-

The charter of Maryland rescued from destruction by the Protestant revolution. ties of the colonial governments, have been portrayed by other and abler writers: and it will suffice to say that *Maryland* came in for her full share of them.

James's connexion with the grant to Penn, and his inclinations against the charter of Maryland thereby occasioned, (which have already been described,) were calculated to give fresh incentives to the general design, in the particular instance. It seems also, that he was further instigated to his attack upon the charter of Maryland, by the representations of a Jesuit, called Father Peters, the causes of whose hostility have not been developed. (42) The design of destroying it was soon formed: and no appeals or representations of the proprietary could avert it. In April, 1687, the *quo warranto* against it was issued: (43) but before the judgment on it was obtained, the monarch was himself

Overthrow of the proprietary government in 1689. brought to judgment by the people: and the proprietary rights only escaped from the arbitrary power of a

Catholic king, to be prostrated by the efforts of a *Protestant Association* within the province. The origin and results of that association form the subject of the next chapter.

The character and results of the proprietary government, during this æra, were such as to reflect imperishable lustre upon the names of *Cecilus and Charles Calvert*. It is not the lustre, which glares around the achievements of ambition or the triumphs of war, and which, like the fire of the funeral pile, hides the victims by

Character of Cecilus and Charles Calvert, and the results of their Administrations.

(42) *British Empire in America*, Vol. 1st. 331.

(43) *Chalmers*, 371.





which it is fed. It is the mild and steady radiance, which beams upon a people's interests from the liberal and gentle administration of them, not to burn, but to quicken and ripen into happiness and prosperity. Their memory wants no monument, but the full and faithful history of their administration, and a contrast of it, with the "lights and temper of the times" in which they lived, and with the specimens of colonial administration around them. The character of Cecilius, the founder of Maryland, has come down to us, identified in his acts and in the language of historians, with "religious liberty and respect for the rights of the people." "Never (says Dr. Ramsay) did a people enjoy more happiness, than the people of Maryland under Cecilius the father of the province:" and on his tombstone (says the more accurate Chalmers,) ought to be engraven, "That while fanaticism deluged the empire, he refused his assent to the repeal of a law, which, in the true spirit of Christianity, gave liberty of conscience to all." His son and successor had grown up in the government of the province, before he became its proprietary: and thus familiarised to the wants and interests of the colony, he had the sagacity to perceive, and the liberality to pursue, the policy which these recommended. The language and transactions of the Assembly of the province, throughout that period, abound with attestations to the excellence of their administration. (44) The voluntary grants of permanent revenue under the

(44) Although we are so far removed from this age, the facts which illustrate the character of the founders of our State, cannot be uninteresting. We shall therefore be pardoned for giving a few extracts from the Assembly transactions, in illustration of the general remark of the text. In the recital to the act of 1640, the Assembly say, "they were thankful to Almighty God for the benefits they had received, since their colony was first brought here, and planted at his lordship's great charge and expense, and continued by his care and industry, and they desire that this may be preserved for ever amongst their records as a memorial to all posterity of their thankfulness and fidelity." Again, in the act of 1671, chap. 11, granting the tobacco duty, they say, "the upper and lower house of Assembly, reflecting, with all imaginable gratitude, upon the great care and favor expressed by his lordship to the people of the province in the unwearied care which his lordship had shewn, and the vast charge and expense he was put to from the time of their first seating unto this instant, to preserve them in the enjoyment of their lives, liberties, and the increase and improvement of their estates and fortunes, therefore, &c." At the session of 1674, this duty was



tonnage and tobacco duty acts, and the frequent occasional gifts by the Assembly, were avowedly made in acknowledgment of it. Nor were these acts and professions, those of a servile and submissive people. The freemen of Maryland, as they were called, were emphatically so from their origin. They never permitted the proprietary to entrench upon what they conceived to be their rights: and the records of this period furnish many instances, in which they opposed and defeated the designs of the proprietaries. Their testimony, in the midst of these occasional differences, to the purity of the proprietary motives, and to their general regard for the interests of the colony, is therefore of the strongest character. Whenever by the temporary excitements, which have been described, the proprietary government was for a time suspended, we find the inhabitants of the province looking back to it, as the children of Israel to the flesh-pots of Egypt, and returning generally with joy. A brief view of the progress of the colony, will exhibit results correspondent to the character we ascribe.

*The colony of two hundred persons, planted in the year 1634, was enlarged, as early as the year 1660, into a population of twelve thousand, and was continually on the increase*  
Population of the colony during this aera. *from the latter period until the Protestant revolution. (45) In 1665, it had increased to sixteen*

continued to the proprietary's son and heir, Charles Calvert, during his life, *in express terms, as an act of gratitude.* At the session of 1676, immediately after the accession of the latter to the proprietaryship, the lower house, (to use their own language) "considering that he had lived long in the province, and had done the people many signal favors, as a token of their love, duty and respects, unanimously desire his acceptance of all the public tobacco then unappropriated." At the session of 1682, the Assembly, "to demonstrate its gratitude, duty, and affection to the proprietary, prayed his acceptance of 100,000 lbs. of tobacco to be levied that year," for which the proprietary returned his thanks, *but replied, that considering the great charge of the province, he did not think fit to accept thereof.* And even at the session of 1688, on the eve of the Protestant revolution, the Assembly say, "That there is nothing more certain, than that his lordship and his noble ancestors, had, with the hazard of their lives, buried a vast estate in the first subduement and continued settlement of the province, to a far greater value than the profits of the province did at that time or were likely to amount to." *Can language be stronger, or evidences more abundant?*

(45) Chalmers, 226. Ramsay's United States, vol. I., 146.





thousand persons; and in 1771 to nearly 20,000. (46) After the latter period and before the Protestant revolution, we have no accurate estimate of its population: but at that revolution, judging from the ratio of increase furnished by the prior estimates, it must have exceeded twenty thousand. *The settlements*, commencing at St. Mary's and on Kent Island, had extended themselves all along the bay on each side of it, from the southern to the northern limits of the province, and for a considerable distance up the Potomac; as will be apparent from the erection of the counties, existing at the close of this æra. *On the Western Shore*, Charles, St. Mary's, Calvert, Anne Arundel, and Baltimore counties; and *on the Eastern Shore*, Somerset, Dorchester, Talbot, Kent, and Cecil counties, were now in existence. The population was seated along the bay and around the mouths of its tributaries, in detached settlements: and if we except the city of St. Mary's, there does not appear to have been another settlement in the province entitled to the name of a *town*, unless we adopt a modern definition of the constituents of a town, which requires in houses, the same number that is necessary in persons to constitute a riot. The city of St. Mary's numbered fifty or sixty houses, in the course of two or three years after the planting of the colony: and very little exceeded this number at any after period of its existence. (47) The causes of this scarcity of towns, notwithstanding the considerable population of the province at the close of this era, are obvious in the character and pursuits of the colonists. *They were all planters*: "and the greater planters, (says Anderson, in speaking of this colony,) have generally storehouses within themselves for all kind of necessaries brought from England, not only for their own consumption, but likewise for supplying the lesser planters and their servants. And whilst that kind of economy continues, there can be no prospect of towns becoming considerable in the province." (48) "The people

(46) The estimate of 1665, is taken from the "*British Empire in America*," vol. 1, 330. Mr. Chalmers, in note 4, to chap. 15, page 375, has erroneously given this estimate from this work, as of the population in 1678. The estimate in 1671, is taken from Ogilby's History, as quoted in that note by Mr. Chalmers.

(47) *British Empire in America*, Vol. I. 338 and 337.

(48) 2d Anderson's *Commerce*, 467.





here, (says another, writing from Maryland about the year 1695 or 1696,) have not yet found the way of associating themselves in towns and corporations, by reason of the fewness of handicraftsmen." (49) In 1682, an attempt was made, by the act of 1682, ch. 5, which was followed up by the supplementary acts of 1684, ch. 2d, 1686, chap. 2d. and 1688, chap. 6th, to establish a variety of towns and ports for the convenience of trade: but these acts defeated their own purposes, by the number which they attempted to establish. The only towns which are alluded to in these acts and described as such, are the city of St. Mary's and Indian town in St. Mary's county; the town at Proctor's in Anne Arundel, Calvert town on Battle creek and Harvey town in Calvert, and Cecil town at the mouth of Bohemia in Cecil. The other sites, selected for the towns established by these acts, are described as town land, landing places, points, &c. and they are, nearly all, at this moment what they were then described to be, and no more.

The colonists, during this period, were almost universally growers of tobacco. Besides this, they scarcely produced any thing for exportation; and it was the very currency of the province. There were but few merchants or tradesmen amongst them; and manufactures were scarcely known, the province relying for these entirely upon the mother country. Some attempts were made to encourage manufactures, such as the making of linen, woollen cloths, leather, and shoes, and to promote the growing of hemp, by the acts of 1681, chap. 6th, and 1682, chapters 5th and 6th; but they did not result in any material change in the pursuits of the colonists. They devoted themselves to the cultivation of tobacco, and continued to import from England, upon the avails of the tobacco exported, almost all the necessaries of life. To use the language of an early writer, in describing the condition of Maryland, at a period very little removed from that of which we are now treating: "Every plantation is a little town of itself, and can subsist itself with provisions and necessaries; every considerable planter's warehouse being like a shop, where he supplies not only himself



with what he wants, but also the inferior planters, servants and labourers, and has commodities to barter for tobacco or other goods, there being little money in this province, and little occasion of any, as long as tobacco answers all the uses of gold and silver in trade." (50)

Notwithstanding the facilities which they derived from this tobacco currency, as a substitute for money, the inhabitants <sup>State of their</sup> experienced considerable inconvenience from the <sup>currency.</sup>

want of a money currency: to obviate which, an act was passed, as early as 1661, viz. the act of 1661, chap. 4th, for the establishment of a *mint* within the province for the coining of shillings, corresponding in purity to the English sterling money, and being equal in weight to ninepence of that money. The passage of this act was an exercise of power beyond the palatinate privileges; and assumed a right, which is generally considered as incident to sovereignty alone; and as such, it was objected to, at the time of its passage, by some of the members of the upper house. Yet it received the assent of the proprietary, and was confirmed amongst the perpetual laws in 1676. It would seem, from the enactments of the following act of 1662, chap. 8th, that the mint was actually established, and money coined in it: for that act speaks of the coin as struck, and provides for the issuing of it, by requiring every householder to come in and take ten shillings of it for every taxable in his family, to be paid for by him in tobacco. Yet it certainly was not kept up for a long period, nor to any considerable extent; for the same scarcity was complained of in 1686, and another act was then passed to relieve the grievance complained of, which is entitled, "an act for the advancement of coins." This act is worthy of consideration as establishing the *provincial* currency in lieu of the *sterling*. (51.)

(50) British Empire in America, vol. I. 340.

(51) Act of 1686, chap. 4th. Under this act, *New England shillings* and *sixpences* were to be received as *sterling* at their denominated value; *French dollars*, *pieces of eight* and *rix dollars*, at six shillings, and *other coins of silver and gold*, except base coin, at three pence advance on every shilling sterling. These coins were a legal tender at this advanced value, in all payments to be made in money, except as to the proprietary's rents and fines. Officers' fees and ordinary charges, which were rated in tobacco, were payable in this





It appears, that there was a *printing press*, and a *public printer*, in the province during this era. Mr. Chalmers, who had examined the declaration of the Protestant Association in 1689, which has been preserved amongst the records of the plantation office, informs us that it was printed at St. Mary's, by the public printer of the province. The existence of a public press, at this early period, appears to have been peculiar to the colony of Maryland; and it may be relied upon as another striking indication of the civil and religious liberty enjoyed by the colonists. The press is the natural associate of liberty.

The degree of religious liberty enjoyed in the province, during this period, may be collected from the preceding remarks.

Religious liberty in the province during this era. The course of the government has already been described as "one which tolerated all christian churches and established none." This system of toleration was coeval with the colony itself; and sprang from the liberal and sagacious views of the first proprietary. The oath of office, prescribed by him to his governors in the province, from 1636 until the enactment of the act of 1649, is in itself a text book of official duty. The obligation of the governor under it was, "that he would not, by himself or another, directly or indirectly, trouble, molest, or discountenance, any person professing to believe in Jesus Christ, for or in respect of religion; that he would make no difference of persons, in conferring offices, favors, or rewards, for or in respect of religion, but merely as they should be found faithful and well deserving, and endued with moral virtues and abilities; that his aim should be public unity, and that if any person or officer should molest any person, professing to believe in Jesus Christ, on account of his religion, he would protect the person molested, and punish the offender." These his cherished principles of religious liberty were at length engrafted by law

coin, at its advanced value, at the rate of six shillings for every 100 lbs. of tobacco. The export of the coins so advanced, was punished by the forfeiture of the value of the coin so exported. Such provisions to bring the coin into the province and to keep it there as its currency, shew that they had derived little if any benefit from their proposed mint. "*The lord proprietary, (says the author of the British Empire in America,) had a mint here, but it never was made use of.*" Vol. I. 344.





upon the government of the province, in the year 1649. (52) The act which gave them legal sanction is one of the proudest memorials of our colonial history. Its preamble contains an argument in favor of the rights of conscience, which should never be forgotten by human governments. "Whereas, (says it,) the enforcing of the conscience, in matters of religion, hath frequently fallen out to be of dangerous consequence, in those commonwealths where it hath been practised; and for the more quiet and peaceable government of the province, and the better to preserve mutual love and unity amongst the inhabitants," &c. The act then declares that no person, *professing to believe in Jesus Christ*, shall be in anywise molested or discountenanced, in respect of his religion, nor in the free exercise thereof, nor in any way compelled to the belief or exercise of any other religion. The operation of this act was, for a short time, suspended by the ascendancy of Cromwell's commissioners, during whose government an ordinance was passed prohibiting the profession and exercise of the Roman Catholic religion: (53) but upon the restoration of the proprietary government, it was revived in all its vigor, and continued to exist, and be respected, until the occurrence of the Protestant revolution. It must, however, be acknowledged, that the course pursued towards the Quakers, at one period of this government, was not in accordance with these principles. But the principal instances of their persecution occurred during an administration, for the acts of which, the proprietary is not properly responsible; and at a period, when the peculiar tenets and practices of that sect, were misunderstood for disaffection to the government. They arose immediately after the surrender of the government to Fendall, and were the promptings of his own arbitrary spirit. Upon the coming in of the new government, it was deemed proper to require all persons to come forward, and take and subscribe an engagement of fidelity to it, which was declined by the Quakers, who alleged in objection, that they were to be governed by God's laws and the light within them; and not by man's laws. To such men as Fendall and some of his council, scruples of conscience were unintelligible, and the

(52) Act of 1649, chap. 2.

(53) Ordinance 4th, of the acts and orders of the Assembly of 1651,



gentle and peaceful doctrines of this sect were, by them, construed into a seditious refusal to submit to the government, for which a decree of banishment went forth against its followers. (54) The proprietary's instructions test his principles, and to these we would look in vain for any thing to give a color to religious persecution of any description. Nor can one or two occasional departures of the government, in moments of excitement and danger, from the principles of religious toleration, be fairly put in opposition to an administration of half a century, characterised by nothing but benevolence to all the followers of Christ. Conspicuous above every other colony of that period, for its uniform regard of religious liberty, it had its reward. Harmony, peace and prosperity, were the general results; and this period in the history of Maryland, may be truly styled, "*the golden age of its colonial existence.*"

(54) Council proceedings of 1658, Liber H H, 29.





## CHAPTER III.

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### HISTORY OF THE ROYAL GOVERNMENT OF MARYLAND.

THE *Protestant revolution* in the province of Maryland, was an event in its colonial history, as extensive in its consequences, as it was singular and unexpected in its origin. From the session of Assembly, in November, 1688, until the complete assumption and organization of the government of Maryland by the crown, in the beginning of the year 1692, there is an entire chasm in our records. At the commencement of this interval, we find the people of the province dwelling under the proprietary government, in apparent security and contentment. In the recorded transactions of that period, we look in vain for the seeds of a revolution, or the preludes to its explosion; and especially of a revolution avowedly originated and conducted for the defence and security of the Protestant religion. The proceedings of the lower house of Assembly, manifest some discontents in the colony; but these, in their causes and extent, were alike those, which characterise many other periods in its history, of acknowledged happiness and tranquillity. They relate to malpractices by officers, or abuses of a public nature from whatever source proceeding, which it was the practice of this house of Assembly, at every age of the colony, to present for reformation to the consideration of the government. Acting as *the grand inquest* of the province, its vigilance was continually exercised, in supervising the administration of the laws, and reporting the abuses of power; and its official representations, detailing these to the proprietary or his governor, instead of being charges against the government itself, often manifested the most entire and cheerful confidence in its inclination to redress them. Before the Protestant revolution, these representations were usually embodied in what was





styled, "*a paper of grievances*;" (1) and after the proprietary restoration in 1715, they took the form of *resolves* and *addresses*. The articles of grievances, exhibited by the lower to the upper house at the session of 1688, do not ascribe a single act of deliberate oppression or wanton exercise of power, immediately to the proprietary or his governors. They do not even insinuate the slightest danger to the Protestant religion; or impute to the proprietary administration, a single act or intention militating against the free enjoyment and exercise of it. They were presented under the expectation of redress; and to crown the whole, the reply of the governor and council, in answer to their articles, was so entirely satisfactory, that the lower house, in a body, presented them their thanks for its favorable character. Here the curtain drops, and when it next rises, it presents to our view, the proprietary dominion prostrate, the government of the colony in the hands of the crown, and administered by men hitherto unknown in it; the Assembly pouring forth its congratulations for the royal protection, and its redemption "from the arbitrary will and pleasure of a tyrannical Popish government;" the proprietary himself formally impeached to the crown by that Assembly; his officers and agents degraded and harassed in every manner; and the Catholic inhabitants, the objects of jealousy, reproach and penalties.

For the causes and progress of the revolution which accomplished this transformation, we would search fruitlessly amongst our existing records. That revolution was commenced and conducted to complete triumph, by an association of individuals; and after its consummation, the province was governed by a Convention

Barrenness of our Records, in all that would illustrate the cause and progress of this revolution.

(1) These papers, as well as many others of that period, amuse us as well by their manner of expression as their matter. One of the messages of the lower house to the upper, relative to the paper of grievances exhibited at the session of 1669, exhibits one of the finest specimens of the genuine *Bathos*, which we have yet seen. "We are very sorry, exceeding sorry, (says the message,) that we are driven to say, that your answer and objections to the paper entitled "*The Public Grievances*," are not satisfactory, or that from the refulgent lustre of the emanations of reason, that shine and dart forth from them, the weak and dim eye of our understandings is dazzled and struck into obscurity." Even Hargrave's eulogy upon Chancellor Yorke could not match this. In another



until April, 1692; when at the instance of the colony, its government was assumed by the crown, and placed under the administration of a governor, directly appointed by it. The proceedings of that association and convention, are wanting to illustrate this revolution. The researches of Chalmers, the full and in general the faithful annalist, terminate at this period. Although his work was written, for the purpose of demonstrating that the colonies were subject to the legislation of parliament, it presents an example of a party production as rare as it is worthy of imitation. Whatever obliquity or feebleness there may be in his reasoning, it does not appear to be sustained by the concealment or misstatement of facts. So far as our researches have extended, and have enabled us to test the accuracy of his work, as a repository of facts, it may be relied on with confidence. (2) In preparing it, he had free access to the records of the plantation office in England; and was there enabled to collect many facts relative to the history of the colonies, which are not elsewhere to be found. The proprietary government of Maryland was more insulated from that of the mother country, than the other colonial governments; and is less dependant upon those records, for the elucidation of its history. Its internal administration resting with the proprietary and the people, the controversies which sprang out of that administration, rarely, if ever, rose to such a height, as to require or call in the intervention of the crown. The control of the English government, limited to its eminent dominion, was exercised only, for the regulation of the commerce of the colony, or in calling forth and directing its energies, in time of war, against the common enemy. The period of which we

part of this message they say, "wise and good men's actions being commonly of one dye are, like the links of a chain, coupled together by the necessary consequence of right reason."

(2) Mr. Chalmers, as I have been informed, was a Scotchman, residing in this city, as a practitioner of the law, at the commencement of the American revolution. Espousing the cause of the crown, he sought refuge in England, and took up his residence in London; where he acquired notoriety as a political writer, and more especially by his researches into the colonial history; and ultimately obtained a place in the trade office. Writing under such circumstances, and for the express purpose of demonstrating the supremacy of parliament, his general impartiality in the statement of facts is truly remarkable.





are now treating, commencing with the revolution of 1659, and terminating with the restoration of the proprietary government in 1715, is an exception to this general remark. During this interval, the government of the colony was a *royal government*; and although its introduction affected no material change in the provincial institutions, it brought with it the practice of transmitting to the plantation office, from time to time, accounts of the government and condition of the colony, from which much assistance might be derived, even in the accomplishment of the limited designs of this work. Destitute of *these aids*, our general view of the government of Maryland, from this period, is collected only from the provincial records now existing in our state offices.

In looking back to the events which immediately preceded the Protestant revolution, it is difficult to discover, in the public transactions, any indications of misrule or oppression on the part of the proprietary, calculated to excite it. So far as the Protestant religion was concerned, the course of the laws, and the administration up to the period of the proprietary's departure for England, was one of entire neutrality. The great object of both seems to have been, to preserve that religious freedom, which had ever been identified with the colony. The proprietary is no where charged by the Assembly, with any act or intention, aiming either at the establishment of his own church, or the injury of the Protestant. No such intentions are imputed by them; and as far as we are able to collect and estimate his conduct, it exhibits none such. Judging from this and the representations of the colonists themselves, his principles and feelings were averse to every thing like persecution. Had they been otherwise, his sagacity would have taught him the folly and danger, of attempting any thing, to the prejudice of the Protestant religion, or the injury of his Protestant subjects. An Englishman of that day, in describing to the committee of plantations, the condition of Maryland in 1681, remarks, "there are there thirty Protestants to one Papist, between whom there is no quarrel: but two persons have been apprehended for saying, that were the parliament dissolved Baltimore should not be quiet in Maryland. (3) This representa-

(3) Chalmers, Note 24, page 376.





tion not only shews the absence of all *jealousies* amongst the inhabitants, on the score of religion, at that period; but also the vast preponderance of the Protestant power. To have provoked its indignation, or even excited its apprehensions, would not only have endangered the proprietary dominion from internal dissensions; but would have given to the crown, already muttering vengeance, and ready to avail itself of any expedient to cast from it the charge of Popery, a most plausible pretext for the assumption of the government. The attempts to excite sedition made by Coode, Fendall, and a few others, in 1681, fell harmless; and it may be safely said, that in 1684, at the time of the proprietary's departure for England, he had the confidence of the inhabitants.

After that period, his relations towards the arbitrary James, were not such as to involve him in the odium which justly attached to the transactions of that monarch. These transac-

The Proprietary relations with the crown, at the period of its occurrence.

tions, so far as the colonies were concerned, were characterised by a deliberate design to prostrate the independence of all the colonial governments; and whatever the watchwords, which the discontented of the moment adopted to sustain their resistance to his oppressions, the jeopardy to their colonial liberties lay at the root of their revolutions. Had not these been menaced, the colonies would, probably, have looked with unconcern upon the religious alarms which were sounded in the mother country. Even there, it was their identification with an administration, ever warring against the political rights of the nation, which, principally, gave them consequence; but this was peculiarly the case in the colonies. The reign of Charles II. was characterised to the latter, by oppressive restrictions upon their trade; and when James ascended the throne, he began the system of levelling all that obstructed his will. Instead of being a party to these royal desigus, the proprietary was always one of their most prominent victims. For his tardy obedience to the restrictive system, he drew down upon himself the serious displeasure of king Charles; and for the crime of being a proprietary with exalted privileges, his government was devoted to destruction by king James. To have lent his aid to either, was to destroy himself.



If we turn from these considerations to the list of grievances presented at the session of 1688, which, it may be fairly presumed, would exhibit the feelings and apprehensions of the moment, he <sup>Assembly trans- actions immedi- ately before its occurrence.</sup> is not there charged with any design hostile to their religion or their liberties. Some abuses are imputed by the lower house to the attorney general, the receiver of quit-rents, and the secretary of the province: but these were ascribed to them personally, and were expressly disclaimed by the deputy-governors and their council, whose promise of redress gave entire satisfaction to the lower house. It is therefore due to this proprietary to say, that whatever might have been the abuses or apprehensions which excited the revolution, there is no just reason for believing that he was treacherous to the welfare of his colony; or forfeited, at that period, his high claims to remembrance, founded upon his liberal and beneficent administration for more than twenty years, as governor or proprietary. Accidental circumstances and the general excitement of the moment, involved him in a common fate with the arbitrary monarch.

The dangers to the Protestant religion, which were impending in England, justly excited both the indignation and sympathies of their Protestant brethren in Maryland. The Catholic inhabitants of Maryland, who had grown up in harmony with the Protestants, and were familiarised with religious toleration, could not have looked coldly upon the acts of the crown, however masked, when their result was to be the loss of their own colonial liberties. General discontent towards the English government, which kept pace with the feelings that pervaded England, was the necessary consequence. At the commencement of the session of 1688, it had not yet turned upon the proprietary. At the close of that session, a step was taken by the proprietary's governors, which indicated distrust of the people, and was, for that reason, well calculated to direct the excitement towards themselves. The proprietary had left his government in commission, to be administered by nine deputy governors; at the head of whom, as president, was Mr. Joseph. If we may judge of president Joseph, from some messages of his which are yet preserved, he was a man who had neither the sagacity nor the temper which were necessary to direct the government in safety, through the excitements of the moment:





and (4) the transactions to which we allude, indicate that his associates possessed little more. The members of the lower house were summoned to the upper, and required to take the oath of fidelity to the proprietary. Indignant at this, the lower house resolved that they were the representatives of the freemen of the province, and acted in that capacity only with the upper house; and that to impose such an oath, either upon their house in its collective capacity, or the members of it during its session, was a breach of privilege. At the same time, they professed their willingness to take the required oath, if any act of Assembly could be shown to sanction its requisition. The upper house refused to proceed in the transaction of business, until the oath was taken; and the Assembly was prorogued. Immediately after the prorogation, their privilege having ceased, the oath of fidelity was again tendered to the members of the lower house, and was then taken by them. *Quem Deus vult perdere, prius dementat.* To manifest apprehension always begets danger; and those towards

(4) He was as great a stickler for the *jus divinum* of his own powers, as king James himself for those of the English crown. His address to the Assembly of 1688, contains as regular a deduction of his "*jure divino*" title, as if he were preparing to try it in an action of ejectment. *It cannot be, (says he,) or at least I hope it is not unknown to the members of this honorable Assembly, that the unquestionable duty of every one of us, and of us all in general, is, that we first render thanks to the Almighty, for that it hath pleased the Divine goodness thus to bless us in this, (I hope) so good and happy a meeting. Nor ought we to be strangers to the end and duty for which the divine Providence hath ordered us thus to meet. I say, Providence hath ordered us, for that there is no protection but of God: and the power by which we are assembled here, is undoubtedly derived from God to the king, and from the king to his excellency, the lord proprietary, and from his said lordship to us, the power therefore whereof I speak, being as said. Firstly, in God and from God; secondly, in the king and from the king; thirdly, in his lordship; fourthly, in us, to the end and duty of and for which this Assembly is now called and met, and is that from these four heads, to wit: of God; the king; our lord; and selves.*

Having thus divided his subject into these four most comprehensive themes, he expatiates upon *things in general*, in a style exceedingly quaint and amusing; and savouring every where of a *hypercritical* sanctity, which may for that very reason be suspected of being *hypocritical*. How natural it is for rulers when their power is tottering from the true basis of the will and affection of the subject, to attempt to prop it by the "*jure divino*." In the history of "*legitimates*," the resort to this has always been found a fatal symptom.





whom distrust is seriously exhibited, seldom fail to give cause for it, however groundless it may at first be.

Such was the experience of the deputies, in all their after transactions. Every act of defence, was represented as one of contemplated aggression. Every ordinary exercise of their powers, was tortured into arbitrary and mischievous prerogative. In January, 1689, they received the intelligence of the expected invasion of England, by the Dutch, under the command of William of Orange. The mighty events which were to flow from this enterprise, and even the ultimate purposes intended by it, were yet hidden in the womb of time; and the deputies, without appearing to have had any designs against the Protestants of the province, or any fixed views as to their course amidst the distractions of England, began to prepare the province for defence. The public arms were ordered to be collected; and some measures were adopted to check the progress of rumors calculated to create disaffection towards the proprietary government. It was the very course to give rumor wings, and she now spread them over the whole colony; diffusing amongst the people, the cry of a popish plot for the destruction of the Protestants, conceived and promoted by the deputies, and to be accomplished by the assistance of the savages. Circumstances soon occurred, to render this imputation of a popish plot, at least as plausible as that of Oates; which, in a period of less excitement, had shaken all England to its centre. A treaty, which had existed for some time with certain tribes of Indians in the province, was now renewed. The proprietary had received command to proclaim William and Mary, which it appears he readily obeyed; but his instructions to his deputies, did not reach them in due season; and hence, whilst the cause of the revolution was completely dominant in England, and the new sovereigns were acknowledged in the surrounding colonies, the deputies waiting the proprietary's will, had not yet formally proclaimed their adhesion. (5) Had the proprietary been personally present in the province, his energy and sagacity, added to the general respect for his character, would easily have surmounted the difficulties of the crisis. His timid deputies lost him his government, by shrinking in

(5) Chalmers, 373.



a moment of emergency above the ordinary restrictions of law, from the exercise of powers not nominated in their commission.

In April, 1689, an association was formed, styling itself, "*An association in arms for the defence of the Protestant religion, and for asserting the right of king William and queen Mary to the province of Maryland, and all the English dominions.*" (6) The deputies were driven to

the garrison at Mattapany; and at length, by the surrender of that garrison on the first of August, 1689, the associators were in undisputed possession of the province. (7) Of the character and motives of most of the prominent individuals in the respective parties to this struggle, the records of the times do not inform us. The names of some of the leaders are preserved in the articles for the surrender of Mattapany; which are signed, on behalf of the associators, by John Coode, Henry Jowles, John Campbell, Kenelm Cheseldine, Ninian Beale, Humphrey Waring, Nehemiah Blackiston, John Turlinge, and Richard Clouds; and, on behalf of the deputies, by William Joseph, Henry Darnall, Nicholas Sewall, Edward Pye, and Clement Hill. (8)

John Coode, who was the leader of the whole association and whose name is identified with the revolution which it accom-

(6) Chalmers, page 373.

(7) This garrison was located at a place, now called *Mattapany Sewall's*, which is situate on the south side of Patuxent river, about two miles above its mouth. The proprietary, at this period, had a fort there, and a favorite residence, from which many of his orders and proclamations were dated, during his residence in the province. I have been informed that there are now no remains of either.

(8) The articles for the surrender of Mattapany, are the only relics of those times, which our records have preserved. Some dispute arose about the terms of the treaty, as late as 1694, when these articles were brought before the council, and recorded amongst its proceedings, at the instance of the late president Joseph; after they had been submitted to the inspection of Jowles, Coode, and other leaders of the association, and pronounced authentic—they stipulated for the surrender of the garrison, and of all munitions of war within it; and for the exclusion of the papists, from all offices, civil and military, within the province: and submitting to these, the persons in garrison were given a safe conduct to their homes, and assured the protection of their persons and property. They are recorded in *Council Proceedings*, from 1694 to 1698. *Liber II D*, part 2d, 63.





Character and motives of John Coode, its leader. plished, is known to us by subsequent occurrences, which shed little lustre on himself or any event with which he was prominently connected. It would not be fair to infer, from the illustrations of his motives in this revolution, which his subsequent conduct afforded, that the other parties to it, were also actuated by similar designs, so far removed from a genuine regard for the public interests and the preservation of religion. In times of revolution, men will rise to power, in whose mouths the alleged causes of revolution are but the watchwords to denote a party, or the calls to lure it on; and whose hearts have never joined the service of the lip. But, as naturally as the muddy particles which float upon it denote the perturbed stream, does the elevation of such men indicate the over excitement of the moment, and diminish the force of its allegations against those, at whom the revolution is aimed. Coode was an avowed revolutionist in the cause of religion; and in the course of a few years afterwards, under the very Protestant dominion which he himself had so largely contributed to establish, he was tried for and convicted of the grossest blasphemies against the christian religion, he being at the same time a minister in holy orders. Revolting against the proprietary, (whose clemency had before pardoned him for revolt,) in order to the establishment of the Protestant government: that government was scarcely established in the province, before he was engaged in sedition against it. (9)

(9) Coode, although confessedly the leader of the association, appears to have fared worse in the end, than the most of the chiefs. *Kenelm Cheseldine* and *Colonel Jowles* appear to have ranked next. Cheseldine was the speaker of the Protestant convention, assembled immediately after the close of the revolution; and also of the Assembly of May, 1692, the first which was convened under the royal government. He received a gift of 100,000 lbs. of tobacco for his services, and was soon afterwards appointed *commissary general*, from which office he was dismissed in August, 1697, for *carelessness and negligence in office*—“*Cl. Proceedings, H D, part 2d, 539.*” Jowles also received a gift of 20,000 lbs. of tobacco for his services in raising troops at the beginning of the revolution. Coode was, in a great measure, overlooked, or at least his rewards bore no proportion to his high rank amongst the associators. When we next hear of him, he was in holy orders: and at the same time lieutenant colonel of the militia of St. Mary’s county, and receiver of the duties in Potomac river, asserting that religion was a trick, reviling the apos-





The representations made by that association, at that period, against the proprietary administration, might therefore be received with some scruples of allowance, from the mere knowledge of the excitements of the moment. But, if we look into their own justification, transmitted to king William at the time, we shall find still stronger reasons for distrusting statements, which would induce the belief, that Charles Calvert, whose name was so long identified

Proceedings of the Associators after the overthrow of the proprietary government.

ties, denying the divinity of the christian religion, and alleging that all the morals worth having were contained in Cicero's offices. He had been elected to the Assembly about that period, when the doctrine of Horne Tooke's case, "*that once a priest, always a priest,*" was applied to him, and he was declared ineligible; and as he could not lose the character, he does not seem to have been *very apprehensive of soiling it*. His blasphemous expressions were reported to the governor and council; and he was dismissed from all employments under the government, and presented by the grand jury of St. Mary's county, for *atheism and blasphemy*. The proofs are recorded at large in *Liber H D*, p. 2, 393 to 397. To escape the presentment, he fled to Virginia.—Governor Nicholson, whose morals did not particularly qualify him for a castigator of other persons irregularities, applied to the governor of Virginia to assist in his apprehension. *There*, although the governor of Virginia issued proclamations and made many ostensible efforts for his apprehension, he contrived to remain in security, and even ventured back to St. Mary's, in disguise, to vent the threat amongst some of his friends, "*that as he had pulled down one government, he would pull down another.*" He contrived to keep Nicholson *at bay*, throughout the whole of his administration, notwithstanding the unceasing efforts of the latter for his apprehension; and his security in Virginia, notwithstanding the proclamation of its governor, provoked the striking rebuke from Nicholson to that governor. "*Your excellency's proclamation seems to me, to be like one of the watch-houses on the Barbary shore, to give notice when the Christians are coming to take them, that they may fly to it for safety.*" Nicholson being removed to the government of Virginia, Coode came in and surrendered himself in May, 1699, and was taken into custody. Being convicted, governor Blackiston, at the instance of the judges of the provincial court, and in consideration of the services rendered by him at the revolution, suspended his sentence for six months, in hopes of his reformation. Of this measure the council approved, and advised the governor to pardon him, if he should conduct himself properly during that period. Age, or affliction, or both, seem to have mended his manners and tamed his insurrectionary spirit; for from this period, he is seen no more in the affairs of the province. *Sic transit gloria mundi*. *Council Proceedings of 1696*, *Liber H D*, part 2d, 393 to 397, 423 to 425, 460. *Council Proceedings of 1698 and 1699*. *Liber X*, 51 to 57, 101, 189, and 220 to 225.



with the prosperity and happiness of the colony, and who had so long enjoyed the respect and affection of his Protestant subjects, had, from the mere bigotry of religion, become the oppressor of his people, and the persecutor of the Protestant faith. The associators, in reducing the deputies by force, had taken the leap from which there was no return. If the proprietary powers were restored, they could not hope to enjoy any great degree of the proprietary confidence. They had now the power in their own hands; and, added to the original reasons for assuming it, were the natural unwillingness to resign power exceeding even the desire to obtain it, and the probable diminution of their individual influence and consequence, if the old order of things were restored. They, therefore, immediately called a convention, which was summoned by a warrant, issued in the name of "*the several commanders, officers and gentlemen associated in arms for the defence of the Protestant religion, &c.*" and was held at St. Mary's on the 23d August, 1689; and they transmitted to the king an exposé of their motives and object, in the revolution which they had effected. It was charged to the full, with accusation and invective against the proprietary; and was admirably adapted for the purposes at which it aimed. It addressed William, upon the very topics which applied to his own title. Its specifications present to us many charges of malpractices and oppressions, which are heard of only here; and are not even insinuated in the list of grievances exhibited by the lower house of Assembly but a few months before; *when*, had they existed in the extent ascribed, we cannot but believe, from the temper and determination of that house, as manifested in its proceedings, that they would have been eagerly seized upon as causes of complaint. They allege, that the deputies, and the officers of the province, both civil and military, were under the control of the Jesuits, and the churches all appropriated to the uses of what they term Popish idolatry; and that, under the permission or connivance of the government, murders and outrages of every kind were committed by Papists upon Protestants. Adverting to the sovereignty of the crown, they represent that no allegiance was known in the province, except that to the proprietary; and that the very acknowledgment of English sovereignty was regarded as a crime; and in proof of this, they refer to the ill usage





offered to some of the king's officers of the customs, at the very period when the proprietary stood by the side of his province to protect it, as far as possible, against the commercial tyranny of England. They charge upon the proprietary, the continual exercise of the power of declaring laws void by proclamation; and they dwell upon the delay of the deputies in acknowledging king William, and their alleged plots with the French and Indians. "But above all, (say they in conclusion,) we consider ourselves, during this general jubilee, discharged from all manner of fidelity to the chief magistrates here; because they have departed from their allegiance, upon which alone fidelity depended, by endeavouring to deprive us of our lives, properties, and liberties, which they were bound to protect." (10)

William wanted no very urgent reasons to induce him to sustain the associators. His interests and inclinations both prompted him to place the powers of government, through-  
Royal government established in Maryland. out his dominions, in the exclusive possession of the Protestants. It gave security to him on his throne, which he prized quite as highly as security to the Protestant religion. The revolution was sanctioned; and the province remained under the dominion of *the convention*, until April, 1692. During that period, when the ultimate destination of the province was not yet fixed, the convention was again assembled in Sept. 1690; but both at this session and that of August, 1689, they do not appear to have made any attempts at a permanent organization of their government. They had thrown themselves upon the pleasure of the king, whom they besought to take the province under his immediate protection and government; and in gratification of their wishes as well as his own, in June, 1691, he established a royal government for it, at the head of which he placed, as governor, sir *Lionel Copley*. Sir Lionel arrived in the province in 1692; and on the 9th April, 1692, he dissolved the convention. Thus was the province placed under the direct administration of the crown;

(10) This exposé of the association is preserved in Chalmers, 382, and terminates his researches into the colonial history of Maryland.





and from this, the period of its full establishment, the royal government endured until 1715. (11)

An Assembly was immediately convened, and then began the work of adapting the government to its new basis. The First Assembly under the new government. opening message of governor Copley, after commenting upon the gracious intentions of the king in sending them a Protestant governor, agreeably to their address, and his own zeal for their interests, in hastening, undaunted, through all difficulties and dangers, to accomplish their wishes, recommended to them a course of moderation. "The making of wholesome laws, and laying aside all heats and animosities that have happened amongst you of late, (says

(11) We cannot find a better exposition of the injustice of this measure, than that furnished by the very proceedings of the crown, in divesting the proprietary of his government. These show conclusively that there was no sufficient reason for vacating the charter; and that the government was returned by the crown upon the plea of "*political necessity*," which has always been deemed the "tyrant's argument."

The charges against Lord Baltimore, were investigated before the privy council, by which an order was passed, on the 21st August, 1690, directing the attorney general to proceed forthwith by *scire facias* against the charter. The proceeding advised was too dilatory; and under the new order of things, it required some proofs of abuse of power to sustain it. The crown took a shorter road to its political purposes. It resolved upon the assumption of the powers of government, without waiting for judicial sanction. The proprietary remonstrated, but without effect. He was heard by counsel, in opposition to the measure; but the king found no difficulty in procuring "*a legal opinion*" to cloak the arbitrary character of the proceeding. We almost blush to name *Lord Holt* as the high authority behind which the crown entrenched itself. Even his high character as an impartial and inflexible judge, cannot shield him from the suspicion of having yielded his judgment to the royal will, in the expression of that opinion. We give the opinion, that the reader may judge for himself, and learn how necessary to all is the petition, "*lead us not into temptation.*"

"I think it had been better, (says he, addressing the President of the privy council) if an inquisition had been taken; and the forfeiture committed by the Lord Baltimore had been therein found, before any grant be made to a new governor: yet since there is none, and it being a case of necessity, I think the king may, by his commission, constitute a governor, whose authority will be legal, although he must be responsible to Lord Baltimore for the profits. If an agreement can be made with Lord Baltimore, it will be convenient and easy for the governor that the king shall appoint. An inquisition may at any time be taken, if the forfeiture be not pardoned, of which there is some doubt." 1st. Chalmers' Opinions, 29.



he,) will go far towards laying the foundation of lasting peace and happiness to yourselves and your posterity; and this, I know, will be very acceptable to their majesties, who are eminent examples of Christian and peaceable tempers." (12) How the Assembly understood this, will appear in the sequel. In their loyal address to the crown, of 18th May, 1692, they offered their most hearty acknowledgments for their majesties' condescension, in taking the government into their own hands, and in redeeming them "from the arbitrary will and pleasure of a tyrannical Popish government, under which they had so long groaned;" and to work they went, to strengthen the foundations of the new government, and to illustrate their notions of religious liberty, by giving exclusive establishment to their own church, and taxing all the inhabitants for its support.

The first act which they passed, was, "the act of recognition of William and Mary;" and the second, "an act for the service The church of England estab-  
lished by law. of Almighty God, and the establishment of the Protestant religion in this province." By the latter, *the Church of England* was formally established; provision made for dividing all the counties into parishes, and the election of vestry men for each, for the conservation of the church interests; and a poll tax of forty pounds of tobacco, imposed upon every taxable of the province, to build churches and sustain their ministers. Thus was introduced, for the first time in Maryland, a *church establishment, sustained by law, and fed by general taxation.*

Under the gentle auspices of that government, whose tyrannical and Popish inclinations were now the favorite theme, the its establish-  
ment a novelty  
in the history of  
the province. profession and exercise of the Christian religion, in all its modes, was open to all—no church was established: all were protected—none were taxed to sustain a church, to whose tenets they were opposed: and the people gave freely as a *benevolence*, what they would have loathed as a *tax*. Perhaps this was not entirely owing to the spirit of toleration. The fallen and corrupt nature of man is ever warring against this spirit; and it requires all the efforts of reason, and the injunctions of the gospel, to retain us in steady obedience to its gentle dictates. In the midst of sorrow and suffering, to forgive our oppressors, is an effort to which human nature





is seldom equal: yet even this does not so task the purity and benignity of the heart, as the hour of power and triumph. Of all the sects and parties which have ever divided men, how few are there, who, in that hour, beholding their adversaries prostrate at their feet, have wholly forgiven the injuries of the past, or have stooped to assuage their sorrows, and to win them from their errors by the language of kindness and persuasion. The proprietary dominion had never known that hour. The Protestant religion was the established religion of the mother country: and any efforts, on the part of the proprietaries, to oppress its followers, would have drawn down destruction upon their own government. The great body of the colonists were themselves Protestants: and, by their numbers, and their participation in the legislative power, they were fully equal to their own protection, and too powerful for the proprietaries, in the event of an open collision. The safety of the latter was therefore identified with a system of religious toleration. But by the revolution, the government was placed in a very different condition. The people of the colony were principally Protestants: and both here and in the mother country, they had just emerged from a struggle commenced, and avowedly prosecuted for the defence of their religion, and terminating in complete triumph. With all the power, persuasions, and excitement of the moment, to tempt them to the measure, they yielded to the temptation. The Church of England was established *by law*: and from the passage of this act of 1692, until the American revolution, it continued to be *the established church of the colony*.

Such *exclusive* establishments are like all-devouring death. They are ever crying for "*more*." Their first aim is to establish

Consequences of  
its establish-  
ment. themselves: and their next to oppress all others.

The usual consequences soon followed. It was not enough to have the power of the laws, and its intrinsic merits to sustain itself: it must have penalties to awe into silence all who might obstruct its universal sway. Hence the act of 1704, chap. 59, entitled "An act to prevent the growth of Popery within the province." Under this act, all bishops or priests of the Catholic church, were inhibited, by severe penalties, from saying mass, or exercising the spiritual functions of their office, or endeavoring, in any manner, to persuade the inhabitants of the pro-





vince to become reconciled to the church of Rome: Catholics, generally, were prohibited from engaging in the instruction of youths: and power was given to the Protestant children of Papists, to compel their parents to furnish them a maintenance adequate to their condition in life. At the same session, however, an act was passed, suspending the operation of these penalties, as to priests exercising their spiritual functions in private families of the Catholic persuasion: and *this exemption* was kept up throughout this era, by succeeding acts. (13)

The course pursued as to *the Protestant dissenters*, exhibited more toleration. For some years after the revolution, *the Quakers* were regarded by the Protestants of the established church with almost as much aversion as the Catholics. The Condition of the Protestant Dissenters under the new government. pacific tenets of this sect, and its peculiarly simple forms of worship, were still mistaken for disaffection to the government: and to the devotees of the newly established church, nonconformity to its rites and doctrines was a crime in Protestant or Catholic. In their understanding, the Protestant church was nothing more or less than the Church of England; and like all exclusives, in the first moments of power, they acted upon the doctrine, "*He that is not with us, is against us.*" The Quakers were persecuted: and even the calmness and silence of their conventicles, where disorder itself might be softened into contemplation, could not exempt them from the appellation of unlawful assemblages. In England, the course of the government was more conformable to the avowed purposes of the Protestant revolution. One of its first acts, after the elevation of William

(13) Acts of 1704, chap. 95; and 1706, chap. 9th, which gave place to the act of 1707, chap. 6th, suspending all prosecutions in such excepted cases, during the Queen's pleasure. It appears from the recitals of this act, that this suspension was at the instance of the crown. At length, in 1718, this act of 1707 was repealed by the act of 1718, chap. 4th: which last mentioned act assigns as the reason for the repeal, the existence of the English statute 11th and 12th William 3d, chap. 4th. By this statute, says the preamble to this repealing act, sufficient provision is made to prevent the growth of Popery in this province, as throughout all others, his Majesty's dominions; and as an act of Assembly can in no way alter the effect of that statute, Be it therefore enacted, &c. This admission of the supremacy of the legislative power of Parliament in matters of internal regulation, is a novelty in the legislative records of Maryland.



and Mary to the English throne, extended toleration to all Protestant dissenters. It was a measure of policy as well as justice: for it behoved William to strengthen himself upon his newly acquired throne, by rallying around it the affections of all his Protestant subjects. This policy at length prevailed in Maryland. In 1702, the provisions of the English toleration act were expressly extended to the Protestants of the province: and the Quakers of the province were declared to be entitled to the benefit of the act of 7th William, 3d. permitting their affirmation to be received instead of an oath in certain cases. (14) Prosecutions having been subsequently instituted for holding Quaker conventicles, and some doubt having arisen as to the operation of the toleration act, it was again expressly adopted in 1706, as a part of the laws of the province. (15) Thus the toleration of the Protestant dissenters was fully and finally secured; and thus in a colony, which was established by Catholics, and grew up to power and happiness under the government of a Catholic, *the Catholic inhabitant was the only victim of religious intolerance.*

The next aim of the Assembly was at the proprietary rights and revenues, which were not incident to the government of the province, and were not, therefore, swallowed up by the revolution. The rights of the proprietary, under the charter, have already been distributed into two general classes, one of which

Proprietary rights and interests not affected by the revolution. embraced his rights of jurisdiction, and the other his rights of soil as the original owner of the lands of the province. The latter, being rights private and personal in their nature and emoluments, were not, of course, destroyed by a mere revolution in the government. The proprietary was still entitled to his quit-rents and alienation fines, and

(14) Act of 1702, ch. 1, sec. 21st. This act adopts the provisions of the toleration acts, with the modification, that all things required by them to be done before any court, or justice, or justices of the peace, should be done before the respective county courts; and that the *registry* of the places used for religious worship by the Protestant dissenters, should be made amongst the records of the county court.

(15) Assembly Proceedings of 1706, and act of 1706, chap. 8th. This act expressly adopts the toleration act of 1st William and Mary, *with all the penal acts mentioned therein.* The introduction of these recited penal acts appears to have been the principal object of this law of 1706.





was still the exclusive owner of the vacant lands. Besides these, he enjoyed revenues, arising from the port duty and the tobacco duty; the origin and extent of which have already been examined. Of these he claimed, as private and personal, all arising from the port duty, and the one half of that arising from the tobacco duty. (16) He had also, whilst he held the government, enjoyed personally the revenue arising from fines and amercements. The land office was closed on the 18th of April, 1689, the period when the revolutionary struggle began, and was not again opened until the 23d May, 1694, when the contest about his land rights was terminated. But pending, and immediately after the revolution, Lord Baltimore asserted his claim to the revenues arising from the sources above mentioned, and instructed his agents to proceed in the collection of them.

In this he was sustained by the crown. Whatever William's policy as to the disposition of the government, he yet did not lose sight of justice, in his proceedings as to the *private rights* of the proprietary. His course, as to these, reflects honor upon his character; and clearly evidences, that the conduct of the proprietary, during the revolution in England, had not been such as to forfeit all claims to his favor. In February, 1689, even before the revolution commenced in the province, he received a royal letter, authorising him to collect his revenues and duties in Maryland; and after the consummation of the revolution, in February, 1690, an order was passed by the king in council, giving him the same general liberty. The leaders of the revolution obeyed the king's injunctions, when it answered their own purposes; but on this occasion, they chose to disregard them. The proprietary's agents were thrown into prison, and harassed in every manner, so that they were unable to avail themselves of the liberty granted: and Baltimore was again compelled to apply to the king for protection. A letter of instruction was now given by the crown to sir Lionel Copley, who was just about to assume the government of the province, enjoining it upon him to take care that the agents of Lord Baltimore "were permitted to live peaceably and quietly, and to act as formerly in receiving his dues and revenues in

(16) Supra, 176 and 178.





the province; and that no vessels should be cleared from it until they had paid their shipping dues." (17)

All would not suffice. Mr. Darnall, the proprietary's agent and receiver general, still encountering the same difficulties, at the session of May, 1692, he preferred a petition to the governor and council, praying that some order might be passed to insure him the liberty granted by the king's letter of 1691. In this petition, he requested that all the bonds, records, and other documents, relative to his lordship's rents and lands, might be delivered to him; that he might be permitted to take possession of the proprietary's houses and plantations, and particularly those of Mattapany and Notley Hall; and that the governor would designate ports of clearance, at which he might appoint agents to receive the shipping dues. (18) The subject of this petition was referred to the lower house. That house determined, that the *port duty* of 14*d.* per ton was, in its origin, a fort duty, given to the proprietary for building magazines and purchasing munitions of war for the defence of the province; and that as such, it belonged to the public; and that as to the tobacco duty, which was originally given under an agreement with the proprietary as to his fines and quit-rents, it should still be continued, if the proprietary would adhere to this agreement, and would also continue his conditions of plantation, as they existed before the revolution, or as they then existed in Virginia; so that vacant lands of the province might still be obtained upon favorable terms. To the fines and amercements accruing after the revolution, it wholly denied his right; and as to the records and papers relative to his lands, it decided that all of these might be surrendered, except the certificates of survey and land records proper; which, as the only evidences of land titles, should be retained, and placed in the custody of the secretary of the province. This decision was concurred in by the upper house; and in conformity to it, an order was passed by the Assembly, prohibiting Lord Baltimore's agents from collecting the port duty, which was directed to be collected by the agents of the government, and placed in bank, to await the king's determination.

(17) This letter of 12th November, 1691, in its recitals, sustains the statements above made as to the course of the crown.

(18) Council Proceedings, Liber FF, 641.



(19) Thus asserting the right of the province to the tonnage duty, the Assembly now passed an act directing its appropriation for the support of government; (20) by the passage of which, the subject was brought directly before the king in council. It was there determined, in conformity to the opinion of the solicitor general, that the proprietary was entitled, in his own right, to the tonnage duty of 14*d.* per ton, and to the one half of the two shillings per hogshead duty on tobacco; but that as to the fines and forfeitures, they were incident to the government, and passed with it to the crown. (21) The act was therefore dissented from; and from this period until his restoration, the proprietary does not appear to have been interrupted in the collection and enjoyment of these revenues.

Some further difficulties still occurred as to his land rights. Sir Thomas Lawrence, the secretary of the province, in whose custody the land records were placed, would not permit Lord Baltimore's agent, to resort to the records, and make searches and extracts from them, except upon the payment of his fees of office. Without detailing the various proceedings connected with this controversy, it will suffice to say, that after having reached the king in council, it was then terminated by agreement. The land records were to be kept in the custody of the secretary of the province. Warrants were to be issued, surveys made and returned, and patents granted, by the proprietary's officers. The patents were to be issued under the proprietary's seal, and recorded in the secretary's office. As the *bonus* of the compromise, one half of all the fees arising from issuing warrants and patents, and entering certificates of survey, was to be paid to the secretary; and the agents of Lord Baltimore were allowed free access to the land records in the secretary's office, for the purpose of perfecting his rent roll. (22) This agreement was confirmed by the

Adjustment and condition of the proprietary's Land Rights during this era.

(19) Council Proceedings, FF, 640 to 643, 661 and 670.

(20) Act of 1692, chap. 17.

(21) Council Proceedings of 2d October, 1693, and Bacon's note to the act of 1692, chap. 17, which sets out at large the proceedings of the king in council.

(22) The proceedings connected with this controversy, may be traced in Upper House Proceedings, Liber FF, 750 to 753; 764, 775, and Liber II D, part 2d, 347.





king in council, on the 13th February, 1695, (old style,) but the rights of the proprietary were previously so far secured, that the land office was opened on the 23d of May, 1694. From that period, it remained open and under the direction of the proprietary, until the 15th of May, 1711; when it was closed in consequence of the death of Colonel Darnall, the agent and receiver general; but was again opened on the 2d of March, 1712, (old style,) and remained open until the restoration. During this era, the proprietary encountered occasional difficulties in the collection of his rents; but this recognition and legal establishment of his rights in the manner above described, existed during the continuance of the royal government.

*The old city of St. Mary's* was the next victim of the revolution. Coeval with the colony itself, it had hitherto been the permanent seat of the provincial government. The original site of the colony of St. Mary's, and, for some years after its establishment, the centre of the whole settlement, it soon attained to all its destined maturity. In a few years after the landing, it numbered sixty houses; and it scarcely ever exceeded that, at any after-period. The colony was now beginning to diffuse itself along the shores of the bay to the extremities of the province; and within thirty years after its first planting, this city was already a remote point on the southern extremities of the settlements. The commerce of the province, as unrestrained as its population, found its outlets at every point to which the latter extended; and St. Mary's soon ceasing to be its commercial emporium, became a mere landing place for the trade of its own immediate neighborhood. The habits and pursuits of the inhabitants, devoted as they were to planting, and relying for their supplies almost exclusively upon the parent country, left it without any other permanent population, than that which is necessarily incident to the site of a government. At a period when most of the facilities of travelling which we now enjoy were unknown, and the business of the government and courts centred to a much greater degree in the capital, than it does at this day, the remoteness of its situation from the great body of the settlements, was a source of inconvenience and expense, always felt, and often complained of. Still the will of the proprietary, and the feelings of the people, all conspired to sustain the privileges of this ancient





city; and as late as 1662, when the inconveniences of resort to it, were as sensibly felt as at any after-period, with a view to the permanent establishment of the legislature, an act was passed, authorising the purchase of land at St. Mary's, for the site of a state house; and another in 1674, to defray the expense of its erection, under which it was actually built, at an expense, which shows, that it was a work of some taste and magnitude. (23) In the year 1671, the *then* town of St. Mary's received a new accession to its consequence by its erection into a *city*, with the privilege of sending two delegates to the Assembly. Yet with all these advantages and expenditures, to give it permanency as the seat of government, the proprietary, in 1683, yielded to the wishes of the inhabitants, and removed the Assembly, the courts and the offices, to a place called *the Ridge*, in Anne Arundel county, at which one session of the Assembly was then held. The want of the necessary accommodations soon drove them from that place; and they were then removed to Battle creek on the Patuxent, where, after a session of three days, the provincial court, from the same cause found it necessary to adjourn. The seat of government was now brought back to St. Mary's; and to encourage the inhabitants in its improvement, the proprietary then gave them a written assurance, that it should not be removed again during his life. (24)

There it remained, until the Protestant revolution, which brought with it a new order of things, and the dissolution of

(23) Acts of 1662, chap. 2; 1674, chap. 16, and the statement of the petition of the Mayor, Recorder, Aldermen, &c. of the city of St. Mary's, preferred to the Assembly at the session of October, 1694, which see in Upper House Proceedings, Liber F F 765.—It appears, that 330,000 lbs. of tobacco were appropriated to defray the expense of its construction; and 100,000 lbs. contributed by the city of St. Mary's. This building endured until the present year, when its remains were destroyed, and a church is now being erected on or near its site. Notwithstanding its antiquity, it was *habitable*, as I have been informed, even down to the present year, and had been used for many years before its entire destruction as a place of worship. Such a monument of our colonial existence might have been spared *all but the ravages of time*. Its very desolation "*would point a moral*," and the recollections which it brings back, "*adorn the history of a free people*."

(24) These statements are sustained by the petition of the city of St. Mary's, in Upper House Proceedings, F F. 765, referred to in next note above; and are not denied in the answer of the Lower House.



all the feelings, which had hitherto retained the government at this city, to the inconvenience of the province at large. It was the interest of the new government to destroy, as far as possible, the cherished recollections which were associated with the departed proprietary power; and there was no object so intertwined with all these recollections, as this ancient city; consecrated by the landing of the colonists, endeared to the natives as the first home of their fathers, and exhibiting at every step *the monuments* of that gentle and liberal administration, which had called up a thriving colony out of the once trackless wilderness. The Catholics of the colony, dwelt principally in that section of it; and under the joint operation of these causes, it had been distinguished during all the troubles consequent upon the civil wars in England, by its unshaken attachment to the proprietary. Without these considerations to prompt to the removal, the recollections and the attachments, which centre the feelings of a people in an ancient capital, would probably have contributed to preserve it as such; until, by the denseness of the population, and the increasing facilities of travelling thereby afforded to the remote sections of the State, the objection to its location would have been in a great degree obviated; and the city of St. Mary's would at this day have been *the seat of our State government*. The excitement of the moment, made its claims to recollection, cogent reasons for its destruction; and the public convenience came in as the sanction.

At the session of Assembly, in 1694, the removal of the government was resolved upon, and measures taken to carry it immediately into effect. The ancient city remonstrated, entreated, offered, reminded; but all to no purpose. Antiquated as they are, her petition, and the reply of the lower house, are not without interest and amusement. She experienced the fate which is common to all things mortal, in the days of adversity and decline. "They laughed at her calamities, and mocked when her fears came upon her." In the petition then presented by her mayor, aldermen, recorder, common council, &c. &c. after dwelling upon her ancient rights and privileges, sustained by their long enjoyment, and confirmed in the most solemn manner by the late proprietary, and upon the advantages of a site, well watered, and surrounded

Influence of the Protestant revolution upon its rank and privileges.

Removal of the government from H.





by a harbor where five hundred sail might ride securely at anchor; they proposed to obviate all the objections, as to the want of accommodations and the difficulty of coming there, by keeping up, at their own expense, a coach or caravan, or both, to run daily during the session of the legislature and the provincial courts, between that city and the Patuxent, and weekly, at other times; and at least six horses, with suitable furniture for all persons having occasion to ride post. The reply of the lower house, is a specimen of the style, wit and temper of the day. Ridiculing the notion that they were bound by what the proprietary might have done, they remark: "As to the great expenditure of money in improving the place and country around, it is against the fact, for more money has been spent here by the rest of the province, than its inhabitants, and all the people for ten miles round are worth; and yet, after sixty years experience, and almost a fourth of the province devoured by them, they still, like Pharaoh's kine, remain as lean as at first; and we are unwilling to add any more of our substance to such ill improvers. The place we propose, is a more central part; and as well watered, and in every respect as commodious as St. Mary's, which has hitherto served only to cast a blemish upon the rest of the province, in the eyes of all discerning men, who, perceiving the meanness of the head, must judge proportionably of the body; and as to the proposition for coaches, &c. the general welfare of the province ought to take the place of that sugar-plum, and of all the mayor's coaches, who as yet never had one." (25)

The place selected as *the new site of the government*, was a point of land at the mouth of the Severn river, called "*Proctor's*," or "*The town land at Severn.*" Before that period, it appears to have been one of that class of towns, which had the three necessary unities already alluded to; and is described in the act of 1783, chap. 83, relative to the ports and places of trade in the province, as the "*Town at Proctor's*;" but it had not attained to that elevated privilege, given by the 23d section of that act; which, in its wise designs to keep the towns it created off the parish, denied to them the right of sending a citizen or citizens to the Assem-

Place selected in  
its stead, as the  
seat of govern-  
ment.





bly, until they were inhabited by as many families, as were able to defray the expenses of their delegates, "without being chargeable to the county." At the period of removal, it was described as "*The town land at Severn, where the town was formerly;*" and as preliminary to the removal, it was now erected into a port of entry and discharge for the commerce of the province, under the name of *Anne Arundel town*; and an act passed for the establishment at it, of the Assembly and provincial courts. (26) The final removal of these from St. Mary's, took place in the winter of 1694-1695, and the first Assembly was held at Anne Arundel town, on the 28th February, 1694, (old style.) At the next session, it acquired the name of the *Port of Annapolis*, and became also the place of sessions for the courts of Anne Arundel county. (27)

It was not erected into a city, invested with the privilege of sending delegates to the Assembly, until 1708. From the moment of its establishment, no efforts were spared by the new government to enlarge its population, and improve its accommodations, so as to give it a permanent hold upon the province; yet with all these aids, it at first increased but slowly. A person writing from Maryland, within four or five years after the removal of the legislature to this place, remarks: "There are indeed several places for towns, but hitherto they are only titular ones, except Annapolis, where the governor resides. Col. Nicholson has done his endeavor to make a town of that place. There are about forty dwelling houses in it; seven or eight of which can afford a good lodging and accommodations for strangers. There are also a state house and a free school, built of brick, which make a great show among a parcel of wooden houses; and the foundation of a church is laid, the only brick church in Maryland. They have two market days in a week; and had Governor Nicholson continued there a few months longer, he had brought it to perfection." (28) A later account of it, represents it as in nearly the same condition, during governor Seymour's administration in 1708. (29) It yet

(26) Acts of 1694, chapters 8 and 9.

(27) Acts of 1695, chapters 2 and 7.

(28) 1st British Empire in America, 333.

(29) Same, 333.



wanted the rank and privilege of a city; and it received these, just as they were dropping from the expiring city of St. Mary's. That ancient place, once so venerable in the eyes of the colonists, and yet memorable in its connexion with the foundation of a free and happy state, after ceasing to be the capital, did not long retain the rank which only mocked its downfall. It lost its privilege of sending delegates in 1708; and soon expired from mere inanition. One by one, all its relics have disappeared; and in the very State to which it gave birth, and the land it redeemed from the wilderness, it now stands a solitary spot, dedicated to God, and a fit memento of perishable man.

Its more fortunate successor was erected into a city by a charter granted on the 16th day of August, 1708, by the honorable John Seymour, then the royal governor of the province. (30) It

Annapolis erected into a city. Provisions of its charter. appears to have been one of his favorite designs, and was proposed by him to the Assembly, as early as

1704. No measures being adopted by the latter to carry his wishes into effect, he at length conferred the charter, by virtue of the prerogatives of his office. Under this charter, besides the powers and privileges relative to the organization and exercise of its municipal government, *the city of Annapolis* obtained the privilege which she has ever since enjoyed, of electing two delegates to the General Assembly. As this charter still subsists, and principally determines, even at this day, the extent of the elective franchise within the city of Annapolis, it is necessary to advert to its provisions, so far as they related to this right. The qualifications required by it for the delegate, were, that he should be an actual resident of the city, and have therein a freehold or visible estate, of the value of £20 sterling. The persons permitted to vote were, the mayor, recorder, aldermen, and common council men of the city; all freeholders of the city, who are defined to be "all persons owning a whole lot of land, with a house built thereon according to law;" all persons actually residing and inhabiting in said city, having a visible estate of £20 sterling; and all persons having served an apprenticeship of five

(30) The original charter has lately been discovered by Mr. Brewer, the register, amongst the records of the land office; and there is a record of it amongst the records of the chancery office, in Liber P C, page 590.





years to a trade within the city, provided three months had elapsed since the obtention of their freedom, and they were also actual housekeepers and inhabitants within the city. The writ of election was to be directed to the mayor, recorder, and aldermen; who became, thereby, the judges of the election.

The power of erecting cities, was one expressly granted to the proprietary by the charter of Maryland, and with great propriety: as it was but the proper incident, of his Assembly proceedings as to its charter. commercial privileges, and of his general power of convening assemblies. The royal governors, however, stood in a very different predicament; and the exercise of this prerogative, without an express authority from the crown, does not appear to have been warranted, either by the nature of their office, or the terms of their commissions. So thought the lower house of Assembly at that period; and hence, at the first session at which delegates appeared from that city, the session of September, 1708, it denied the right of the governor to confer the charter, and expelled the delegates elected under it. Astonished at a measure so bold and unexpected, the governor, at first, attempted to win it to his purposes by conciliation. Its members were summoned to the upper house, where they were addressed by him in language disclaiming all intention to interfere with their rights and privileges in determining the election of their own members, but claiming for himself also, the competency to judge of his own prerogatives: and they were urged to return to their house, and rescind their resolution. In justification of themselves, they replied, that the course pursued by them was founded upon the complaint of some of the freeholders and inhabitants of Annapolis, who conceived that it affected their rights as freemen, and particularly as to the privilege of voting for delegates; that the right to erect cities, was not expressly vested in the governor, and ought not therefore to be exercised until the queen's pleasure was known: but that they would cheerfully concur with him in granting the charter, if all the inhabitants and freeholders of the place desired it, and were secured, in their equal privileges as to the choice of delegates, and in all other privileges to which they were entitled by the laws of England, and, at the same time, the public lands and buildings secured to the uses for which they were purchased.





The governor now tried the usual expedient with a refractory house. (31) The Assembly was dissolved: and a new house immediately summoned, which he at first found quite as unmanageable as the old. Their first message desired him to inform them, if he had received from her majesty any instructions authorising the grant of charters and the erection of cities, which were not contained in his commission: and if so, to communicate them. His brief reply was, "that he had no doubt of his own right: and if the exercise of the power was unwarranted, he was answerable to her majesty, and not to them." To bring this difference to a close, a conference was now had between the two houses; which terminated in a compromise, and in the passage of the act of 1708, chap. 7th, to carry that compromise into effect. By this act, the charter of Annapolis was confirmed, under certain reservations as to the public buildings, and restrictions of the municipal power, which it is not necessary here to notice: and with the reduction of the public allowance to its delegates for attendance in Assembly, to the one half of that granted to the several delegates from the counties. (32)

From this period, this city was continually on the advance. It never acquired a large population, nor any great degree of commercial consequence: but long before the era of the American revolution, it was conspicuous as the seat of wealth and fashion: and the luxurious habits, elegant accomplishments, and profuse hospitality of its inhabitants, were *proverbially* known throughout the colonies. It was the only place in the province affording the means of gratifying those luxurious longings and fastidious appetites, which belong to indolent wealth, striving to escape from the poverty of its internal resources by the novelty which it buys, and calling that "enjoyment" which relieves it from the ennui of the moment, even by occupation in trifles. It was the seat of a wealthy government, and of its principal institutions; and as such, congregated around it, many whose liberal attainments eminently qualified them for society, and the endowments of whose offices enabled them to keep pace even with the extravagance

Ultimate rank  
and condition of  
Annapolis under  
the proprietary  
government.

(31) Upper House Proceedings from 1699 to 1714, 945 to 956.

(32) Act of November, 1708, chap. 7th.



of fashion. Where there is honey, there will be bees. The wealth, fashion, and ambition of the province, all tended to the capital, and soon drew to them the means of gratification. Youth, beauty, and intelligence soon chastened these into refinements, and shed around them the most dangerous allurements of pleasure: and *Annapolis* became, what a modern city now styles herself, *the Athens of America*. How far it contributed to her moral improvement, or social happiness, we shall not undertake to say. Tradition even yet preserves many a narration of the chroniclers of olden times, to incline to the belief, that her pleasures, alike those of luxurious and pampered life in all ages, ministered neither to her happiness nor her purity. (33)

(33) A French writer, in speaking of this city as he found it during the progress of the American revolution, when it may be reasonably inferred, from the distresses of the moment, that *the tone* of society was considerably subdued, thus describes it—"In that very inconsiderable town, standing at the mouth of the Severn, where it falls into the Bay, of the few buildings it contains, at least three-fourths may be styled elegant and grand. Female luxury here exceeds what is known in the provinces of France. A French hair dresser is a man of importance amongst them; and it is said, a certain dame here hires one of that craft at 1000 crowns a year. The state house is a very beautiful building; I think, the most so of any I have seen in America." *New Travels by the Abbe Robin, one of the chaplains to the French Army in North America*, page 51.

This forms a striking contrast to the description given of it, at a much earlier period, by a poet calling himself *E. Cooke, gentleman*, in a poem called "*The Sotweed Factor, or a Voyage to Maryland*," for the perusal of which I have been indebted to the kindness of Mr. Jonas Green, of Annapolis.

To try the cause, then fully bent,  
Up to Annapolis I went;  
A city situate on a plain,  
Where scarce a house will keep out rain;  
The buildings framed with cypress rare,  
Resemble much our Southwark Fair;  
But strangers there, will scarcely meet  
With market place, exchange, or street;  
And, if the truth I may report,  
It's not so large as Tottenham court—  
St. Mary's once was in repute,  
Now here the Judges try the suit;  
And lawyers twice a year dispute—





Under a government of laws, the character of its subordinate administrators has but little connexion with its history. In its transition from a proprietary to a royal government, the province of Maryland lost none of its political liberties. It still retained its assemblies of the free-men: and the manner of their organization was determined by law, at the very first session of Assembly held under the new government. (31) All that related to the extent and exercise of the elective franchise, being thus placed beyond the control of the royal governors, the powers of the latter were limited to their right to convene, prorogue, or dissolve the assemblies. These powers they could not exercise wantonly, with impunity: for they depended upon the assemblies, for what has been very appropriately termed "*the sinews of government.*" The power to levy taxes of any description, belonged to, and was exercised exclusively by, the assemblies. The prerogative of the crown itself did not venture beyond *requisitions* to them. The purely executive power of appointing to the offices of the province, was almost the only one which was susceptible of abuse in their hands: and the assemblies held a check upon this, in the nature of the salaries and perquisites attached to the offices, even up to that of the governor. These were generally granted, for short periods, by temporary acts: and thus the executive was retained in a state of dependence upon the legislative power, sufficient to countervail the preponderance of prerogative. The governors who presided over the province during the royal government, were *Sir Lionel Copley, Sir Edmond Andros, Francis Nicholson, Nathaniel Blackiston, John Seymour and John Hart.*

As oft the bench most gravely meet,  
Some to get drunk, and some to eat  
A swinging share of country treat;  
But as for justice, right or wrong,  
Not one, amongst the numerous throng,  
Knows what it means, or has the heart  
To vindicate a stranger's part.

This Poem, with another upon Bacon's Rebellion in Virginia, were published at Annapolis, in 1731; but Mr. Green, by whom it was then printed, reminds the reader that it was a description written twenty years before, which did not agree with the condition of Annapolis at the time of its publication.

( 34) Act of 1692, chap. 76.





The administrations of Copley and Andros were of very short duration; and the only material events connected with them, Administrations of Copley and Andros. relate to the establishment of the new government upon its Protestant basis, as already described; or to the mere organization and administration of its institutions, the consideration of which belongs properly to the several histories of those institutions. Copley was received with great joy by the province, as its first Protestant governor; and during his short government, he appears to have retained the confidence and affection of the colony. Andros, who came in merely as an *interim* governor, is the same person who was so conspicuous for his connexion with the arbitrary proceedings of king James against the chartered governments of New England. Neither he, nor his successor in the government of Maryland, Francis Nicholson, appear to have lost much of the royal favor, by their connexion with those transactions. They had only sinned against the liberties of the colonies; and this was no unpardonable offence in the eye of the crown, when it was the result of devotion to prerogative. Andros was the acting governor of Virginia, at the time of his accession to the government of Maryland; and his administration in the former colony, is said to have been characterised by mildness and sagacity. (35) In Maryland, his administration was of too short duration to develope either his temper or policy; and is not distinguished by any material results.

*Francis Nicholson*, who was appointed to the government of Maryland in February, 1694, is distinguished in the history of Administration of Governor Nicholson. New York, as the deputy governor of that colony, under Andros, at the period of its annexation by king James, to the New England colonies. Immediately after the Protestant revolution, he was transferred to the government of Virginia, as its lieutenant governor, under Lord Howard; and continued to preside as such over that colony, until he was superseded, in 1692, by the arrival of its new governor, sir Edmund Andros. He was commissioned lieutenant governor of Maryland in February, 1691; and was, by virtue of his commission, entitled to the government of the province immediately

(35) 2d Burke's History of Virginia.



upon the death of Copley; but being then absent in England, the government was assumed by Andros, who continued to administer it until Nicholson's arrival in July, 1694. (36) He appears to have possessed a considerable degree of intelligence and energy of character. He was the devoted friend of arbitrary power, both in church and state; yet his advances towards this, were covered by the utmost courtesy of manner, and regulated by a most prudent regard to the circumstances of the times. A pliant minister of the crown, he was yet the courtier of the people; and to win the favor of the people of Maryland, he was conspicuous for his devotion, in language, to the rights and liberties of the Protestant church, as by law established. His weak point was his vanity; and under the influence of this, he often endangered all the advantages which he would otherwise have derived, from his generally conciliating manners, and his happy faculty of accommodating himself to the tempers of those around him, and the circumstances of his situation. He was always engaged in projects, adapted to the temper of the colonies over which he presided, and eminently calculated to conciliate their favor. When first removed to the government of Virginia, he mixed freely with the people, conversed with them upon the topics with which they were familiar, instituted games and exercises, and distributed prizes, to encourage their favorite amusements of running, riding, wrestling, and shooting; and finding them most earnestly desirous for the convention of an Assembly, he convened it against the express instructions of his superior. (37) Arriving in Maryland, he found its inhabitants as yet fresh in the enjoyment of an exclusively Protestant government; and the liberties and security of the Protestant church, the watchword of the day. He now became the most zealous of the orthodox, in its advancement. "Before his time, (says a writer of that day,) there were scarcely any Protestant ministers in Maryland; but governor Nicholson being a great promoter and encourager of the clergy, by his protection, the face of affairs

(36) Smith's History of New York, 103; Chalmers's Annals, 590; 2d Burke's History of Virginia, 310, 315 and 317; 1st British Empire in America, 395.

(37) 2d Burke, 312.





mended, and the orthodox churches were crowded as full as they could hold." Annapolis being the child of the Protestant revolution, and its establishment one of the favorite measures of the colony, his constant endeavors were used to improve and increase it. (38)

Yet laudable as these efforts were, at the bottom of all lay an inordinate ambition and vanity, which could not brook any thing like opposition, or a disposition to call his abilities into question; and when galled by these, he was unable to control his temper, and became even vindictive. He was *thus* involved in several controversies with the Assembly, towards the close of his administration. His proceedings against the celebrated John Coode; and Clarke, and Sly, who were alleged to be his abettors, fully illustrate this part of his character. Coode had provoked his indignation, by calling his administration into question, and by the intimation, that as he had pulled down one government, he might lend his aid to the overthrow of another. Being returned as a member to the house of delegates, in 1696, Nicholson objected to him, as "having been in holy orders;" and refused to administer to him the oath of office. The lower house insisted upon their exclusive right of judging of the qualifications of their own members; and that in Coode's case, the objection was idle, as he had been a member for nearly twenty years. The governor, determined not to yield the point, summoned several of the most distinguished lawyers of the province to the upper house; who gave it as their opinion, that "his having been in holy orders, stamped upon him an indelible character which the ordinary alone could remove." The lower house still adhered to their original ground, notwithstanding the remonstrances of the governor and his council; which at length revealed the true secret of the objection, by representing him "as a meddling and contradictory spirit, who had already cost the country more money than he was worth." The governor, finding them unyielding, refused to qualify him; and the house were thus obliged to proceed to business without him. (39) Having dismissed Coode from all his employments, and caused him to

(38) British Empire in America, vol. 1st, 333.

(39) Upper House Journals of 1696, 903 and 904.





be indicted for blasphemy; he followed up his attempts to apprehend him, with an ardor which never abated during his whole administration, and which manifested more of vindictive personal feeling, than of regard either for church or state. (40) His proceedings against Clarke, a lawyer of St. Mary's, and Sly, the relative of Coode, are filled with the same spirit; for their principal offences seem to have consisted in ascribing to him certain acts of licentiousness, as making part of his early history, which did not very well comport with his new born zeal for the church. (41) Yet when his personal animosity was not thus excited, his administration was calculated to win the favor of the people; and this, with all his aberrations, he appears to have enjoyed in a considerable degree, even down to the period of his removal. (42)

*The external relations of the province*, during his administration, evolved no events which produced any permanent effect upon its government or condition. They are remarkable only, for the introduction of that system of general contribution amongst the colonies, in the defence of the frontiers against the French; which was kept up by the crown, until the final expulsion of the French from Canada. The settlements of the French in Canada had now become formidable. Extending their fortifications along the lakes, the struggle for mastery, which endured for more than half a century, was

External relations of the colony during his administration.

(40) See *supra*, page 230.

(41) The proceedings against them will be found in the Council Proceedings, Liber X, 56 to 66;—and in the records of the provincial courts of that period. The acts which these persons ascribed to him, if true, might very properly be called "*The Memorabilia*" of governor Nicholson; for they are more unparalleled even than the luxurious Cleopatra's *solution of pearls*.

(42) See the address of the Assembly of 18th October, 1694, which commends, in the very highest terms, his efforts in the cause of the gospel and the Protestant religion, in the instruction of youth by the establishment of free schools, and his care for the security and defence of the province;—that of 2d October, 1696, equally complimentary, which remarks, "He hath always treated us with justice, not considering so much his own as our good;" and that, at the period of his removal, of 12th November, 1698, signed by the councillors, burgesses, justices of the provincial court, members of the bar, and jurors, returning him their thanks for the many services he had rendered the colony whilst governor. *Council Proceedings, Liber F F*, 791, 921 and 1029. See also the preamble to the Act of July, 1696, chap. 17.



already commenced between them and the English colonies. The principal resistance to their encroachments, which the French had hitherto encountered, arose from the implacable hostility of the *Five Nations*; whose position, on the borders of New York, had materially contributed to its defence. Peculiarly exposed by its situation, as the frontier colony, to the attacks of the French, that province had hitherto relied, in a great measure, upon its own resources; and the other colonies, whilst they reaped the benefits of their efforts, were exempt from the perils and burdens of their defence. The French war, ensuing upon the accession of king William, rendered a new system of defence necessary. The government of New York now began to look to the sister colonies, for assistance in repelling the aggressions of the common enemy. In April, 1692, she addressed to the government of Maryland, a most earnest solicitation for her aid in keeping up the garrison of Albany, which (says she) is the frontier garrison of all the English plantations on the main of America, and by the loss of which we must lose our Indians also. (42) It was soon followed by a letter from the king, enjoining it upon Maryland, in general terms, to give assistance to New York; (43) but these general requisitions being attended with little effect, the king transmitted new instructions to the colonies in 1694, in which the quota of assistance, to be furnished by each colony, was particularly defined. (44) Thus began, in Maryland, the *system of crown requisitions*, which was ever afterwards kept up in the general operations of the colonies against the common enemy. The plan of their united efforts being concerted, the king's instructions to the colonies allotted to each the quota of men and money to be furnished by it for the common enterprise. These requisitions, although intended to be imperative, were not always regarded as such. They had to pass through the ordeal of the colonial Assemblies, upon whom alone it depended to give them energy, and by whom they were carried into effect, when it suited the convenience of their colonies. In Maryland, they were frequently disregarded both at this and other periods of her colonial history. To narrate particularly

(42) Council Proceedings, Liber F F, 613 and 673.

(43) Same Liber, F F, 791.

(44) Same Liber, H D. part 2d, 138.





all the transactions of this administration in connexion with them, down to the treaty of Ryswick in 1697, would be an useless task. (45) They were received with a very ill grace by the Assembly of Maryland, at this period : and obedience to them was generally declined, upon the plea of inability to incur more than the expense of their own frontier defences. Some of these transactions present an amusing contrast between the past and present condition of Maryland and New York : (46) and the general results of the system to which they belonged, are still interesting in the colonial history. This system of requisitions, imperfect as its obligations were, in some measure

(45) The various proceedings of the government of Maryland, in relation to these requisitions, will be seen in Council Proceedings, Lib. FF, 613, 673, 791, 802, 831 and 893. Liber H D, No. 2, 138, 144, 148, 191, 251, 276, 307 and 372.

(46) The calls made upon Maryland for her assistance were exceedingly harassing to her Assemblies. The quota required of her at the session of October, 1695, was £133 ; but the Assembly represented the province as utterly unable to meet the requisition, and resolved to petition the crown for relief from it. In this exigency, the governor came forward and offered to advance the money. His offer was gladly accepted, and the money transmitted. About that period, Thomas Tasker, the treasurer of Maryland, was sent by governor Nicholson, on an embassy to New York, with a small sum of money for her relief. Tasker was instructed to represent the difficulty with which that sum was raised, and the utter inability of the colony to meet any further demands upon her ; and to desire the government of New York to send commissioners to Maryland, by whom they might be satisfied as to her distressed condition. The following is the Council record of the result of Mr. Tasker's embassy :

" His Excellency was pleased to ask Captain Tasker, what answer the Council of New York government gave concerning sending some person from thence to be at our assemblies here : to which he says, it was answered to him that it was *too expensive* to send one, for that their last messenger had cost their government £19 *sterling*. Thereupon the Hon. Col. Nicholas Greenberry, then present, informed his Excellency and the Board, that the said messenger was at no expenses during the time he staid on this side the bay, being the place where his business lay ; but does withal observe, as also several others of the gentlemen of the council, that he kept drunkening up and down, and was of very ill and rude behaviour during his stay here : and that it was no wonder for him to bring them in such an account of expenses, *considering the character his brother Vander Brugh, at New Castle, bears.*" Council Proceedings of 4th October, 1695, FF, 831.





imparted to the English colonies the character of a *confederacy*. It familiarized them to the advantages and necessity of union. It led them to regard each other, not as rival dependencies, but as sister colonies. It promoted an intercourse between their inhabitants, which eminently tended to render them one people in manners and habits of thinking, although living under distinct governments. Above all, it taught them to rely upon their own energies for protection, and trained them to all the expedients of self defence.

This administration is also remarkable for the establishment of a *public post*. A general post-office establishment for the colonies, was instituted by the English government in

Public post established.

1710; before which period, it is generally believed to have been unknown in them. A public post was, however, established in Maryland, at the instance of governor Nicholson, as early as 1695. The post route established, extended from a point on the Potomac, through Annapolis, to Philadelphia. A number of stations, on the route, were designated as places for the receipt or deposit of letters. (47) The postman was bound to travel the route eight times a year; and it was his duty to carry all public messages, and to bring and leave all packets and letters for the inhabitants of the province, according to their direction; for which services, he was allowed, out of the public money, an annual salary of £50 sterling. The system was defective, because it was not made to defray its own expenses by a charge for conveyance; but it was kept up until 1698, when, by the death of the postman originally employed, it was suffered to drop, and does not appear to have been afterwards revived. (48)

The character and influence of the succeeding administrations of governors *Blackiston*, *Seymour*, and *Hart*, were in gene-

(47) The route designated began "at Newton's Point, upon Wicomico river," and ran thence "to Allen's mill, thence to Benedict Leonard Town, thence over Patuxent river to George Lingan's, thence to Larkin's, thence to South river, thence to Annapolis, thence to Kent, thence to Williamstadt, thence to Daniel Toats's, thence to Adam Peterson's, thence to New Castle, and thence to Philadelphia."

(48) Proceedings of Upper House for 1695, Liber FF, 821; Council Proceedings of 1695, Liber HD, part 2d, 174; of 1698, Liber X, 44.



Administrations  
of Governors  
Blackiston, Sey-  
mour, and Hart.

ral, favourable to the liberties and prosperity of the colony. Blackiston, who qualified as its governor on the 2d of January, 1698, (old style,) acted as such until near the close of the year 1701; when, in consequence of the feeble state of his health, he was, at his own solicitation, permitted to return to England. He was a man of honor and integrity, and enjoyed in a high degree the affections and confidence of the colony. The strongest evidence of their undiminished respect for his character, is found in the fact, that after his return to England, he was employed by the Assembly as the agent of the colony, to protect its interests with the crown and parliament. (49) Upon his departure, the administration of the government devolved upon *Colonel Edward Lloyd*, the president of the council; in whose hands it remained, until the arrival of governor Seymour, in the spring of 1704. (50) Notwithstanding the difference between this governor and the assembly about the chartering of Annapolis, the transactions and accounts of that period represent him to us as an estimable man, whose general conduct in the province gave satisfaction. By his death, in 1709, the government again devolved upon Colonel Lloyd, by whom it was administered until the arrival of governor Hart, in 1714.

The history of *the foreign relations* of the province, during these administrations, presents nothing of moment in connexion with the history of the government, but the attempts which were made in England to break down *the charter and proprietary governments*. These illustrate the constant policy of England with reference to the colonies; which was probably quickened at this period, in consequence of the occasional disregard of the king's requisitions by the colonial Assemblies. The more subtle mode of destroying their liberties, by a system of parliamentary taxation, had not yet been devised. It was reserved for the memorable ministry of Grenville. At that early period, the direct destruction of the charters was the clumsy expedient for getting rid of their checks upon the crown. It is but justice, however, to remark, that throughout every period of their history, the colonies

Attempts, during  
these Adminis-  
trations, to de-  
stroy the charter  
governments.

(49) Upper House Proceedings, from 1699 to 1714, Liber W H J, 240.

(50) British Empire in America, vol. 1st, 334.





held in their bosoms some treacherous friends; who, like Milton's evil spirit, were ever whispering into the ear of the ministry, the promptings of their own ambition or malignity against colonial independence. Representing the colonists, either as animated by factious opposition, or as aiming at independence; and diminishing, to the view of the mother government, the hazard of an attempt upon their liberties; these *Dolons* effected more to the prejudice of the colonies, than a host of open enemies. At the period of which we are treating, the colonies found an enemy of this description in the person of governor Nicholson. He had been translated from the government of Maryland to that of Virginia. One of his earliest efforts, after his removal to the latter, was to press upon its Assembly the adoption of the quota system for the defence of New York, enjoined by the king's requisitions of 1694-95. Although backed by fresh injunctions from the king, he was foiled by the firmness of that Assembly; which still resolutely declined its adoption, alleging, in justification, "that no fort which was built in New York, could in the least avail to the defence and security of Virginia; which might be invaded by either the French or Indians, without coming within one hundred miles of any such fort." (51) Enraged at his disappointment, he now transmitted several memorials to the king, including one from Quarry, his satellite, and a member of his council. Quarry's memorial represented, "that the people of Virginia were numerous and rich, and full of republican notions and principles, which ought to be corrected and lowered in time; and that then or never was the time, to maintain the queen's prerogative, and put a stop to those wrong, pernicious notions, which were improving daily, not only in Virginia, but in all her majesty's other governments. A frown now, from her majesty, could do more than an army hereafter." And in another memorial, which is said to have been their joint production, the direct proposition was submitted, "*that all the English colonies of North America should be reduced under one government, and one viccroy; and that a standing army be there kept up on foot to subdue the queen's enemies.*" (52) Such was the char-

(51) First British Empire in America, 399; 2d Burke's Virginia, 322.

(52) 2d Burke's Virginia, 326 and 327.





acter of the representations, which these minions of arbitrary power, in the colonies, were from time to time submitting to the crown. Under such influences, a bill was brought into parliament, in 1701, proposing the destruction of the charters of Massachusetts, New Hampshire, Rhode Island, Connecticut, East and West Jersey, Pennsylvania, Maryland, and the Bahama Islands; and the conversion of their governments into unchartered royal governments. The preamble to this bill assigns as the reason of the measure, "that the severing of such power and authority from the crown had been found, by experience, prejudicial and repugnant to the trade of England, to the welfare of his majesty's other plantations in America, and to his majesty's revenue arising from the customs, by reason of many of these plantations, and those in authority there under them, by encouraging and countenancing pirates and unlawful traders, and otherwise." (53) The true reason being of too delicate a nature to be avowed, here was the usual *ad captandum* appeal to the advantages of English trade. The agents of some of the colonies were heard before the House of Lords in opposition to this bill, and it was ultimately defeated; but there is reason to believe that it had the sanction of the crown. In July, 1701, a letter was addressed by the lords commissioners of trade to the government of Maryland; which was manifestly connected with the designs of this bill, and was intended to promote them, by the accumulation of objections to the proprietary governments. It instructed the governor to collect, and transmit speedily to them, "the best information in relation to the ill conduct of proprietary governments, especially of Maryland, when under that government; and of the adjacent proprietary governments of Pennsylvania and the Jerseys." This letter was laid by the Governor before the council, in November, 1701. The feeble objections to the antecedent proprietary government of Maryland, which this call elicited, form the very best answer to the alleged causes of the revolution. From the character and inclinations of the representation now made by the council, it is manifest, that if that government had been characterized by the acts of oppression ascribed to it by the Protestant Associators, such acts would have

(53) Pitkin's United States, vol. 1st, p. 121.



been presented in high relief. Yet the only objections which it alleges against the former government are, "that under it there was no oath of allegiance to the crown, but only the oaths of office and that of fidelity to the proprietary; that the laws of the province were not transmitted to the king for allowance; that there were no appeals to England from the decisions of its courts, and that the judgment of the upper house of Assembly was final in all causes; that two of his Majesty's collectors at Patuxent, Mr. Rousby and Mr. Pain, were murdered in the execution of their office, but they will not say that the same was properly chargeable upon the government; and that the tonnage duty of 14*d.* per ton, being in its origin a port duty, did properly belong to the province." Their replies, as to Pennsylvania and the Jerseys, manifest no great degree of good will towards those governments. The former, they represent as having been the harbor of fugitive seamen and debtors, and runaway servants; and as having been much resorted to of late years by pirates. "As to the Jerseys, (say they,) having no commerce with them, they being remote, we can only say, that they have been a receptacle of pirates with their effects, and have given encouragement to illegal traders running their goods there." (54)

It must not, however, be imagined, from the character of these answers, that the people of Maryland were favorable to the design of merging their distinct colonial government in one having general superintendence over the colonies. Their wishes did not extend beyond the continuance of their separate royal government; and they were particularly averse, at that period, to schemes for the union of the colonies under one government. At the session of 1704, a formal remonstrance was drawn up under the directions of the Assembly, "suggesting such reasons (says the record,) as may induce her Majesty to put a stop to all proceedings levelled against the constitution of this province by the governor of New York." (55) What these proceedings were, the histories of New York, within our reach, do not inform us.

(54) See this representation of the Council, in Council Proceedings of 29th November, 1701, Liber X, 274.

(55) Upper House Journals from 1699 to 1714—301.





It seems probable, however, that this remonstrance had reference to the plan of union amongst the colonies, which is said to have been projected shortly before that period, and under which there was to be a *general congress*, consisting of two deputies from each colony, having power to adjust all differences amongst the colonies, to determine and assess the quotas to be contributed by each for the general defence, to bring to justice fugitive debtors and criminals, and to protect from injury the commerce of each colony. At the head of this government was to be placed a *royal commissioner*, residing at New York, as the governor of that colony; who was to be *ex officio* president of the congress, and the commander in chief of the colonial forces. (56) The effectuation of such a scheme, at that early period, might have been attended with most disastrous results to the colonies. It was not, however, seriously urged; and the Assembly, or Council transactions, do not again allude to any such project during this period.

The design for the destruction of the charter and proprietary governments was again revived, in parliament, at the session of 1715, immediately after the restoration of the province to Lord Baltimore. It required all the energies of the proprietaries and colonial Assemblies, and their respective agents, to defeat this attempt. Petitions against the measure were preferred from all the colonies to be affected by it. Amongst these was one preferred, on behalf of the infant Lord Baltimore, by his guardians: which entreated that his province might be excepted from it, inasmuch as he and his brothers and sisters, who had lately become Protestants, depended for their support upon the revenue of the province, which would be taken away by this measure, and was estimated by them at £3000 per annum. (57) The united efforts of the colonies at length occasioned the abandonment of the bill; and the newly restored proprietary of Maryland was admitted to the full enjoyment of his government, which subsisted from this period until the commencement of the American revolution, without further interruption.

New attack upon the charters in 1715.

(56) See the details of this project in 1st Pitkin's United States, 141.

(57) Anderson's Commerce, 287 to 290, which states the substance of the petition preferred by the colonies.





The information furnished by our records as to the population and trade of the colony during this era, is meagre and imperfect. Their defects would most probably be supplied by the records of the Plantation Office in England. An admirable improvement in the royal administration or supervision of the colonies, was introduced in the year 1696, by the establishment of a standing council for them; the members of which were styled "The Lords Commissioners for Trade and Plantations." For many years before the institution of that board, all subjects having relation to the colonies, which were brought under the consideration of the English government, were referred to special committees of the privy council, whose duties did not extend beyond the subjects particularly referred. But the commercial and manufacturing interests of the mother country had now become too important to be thus administered. Hence this permanent Board of Commissioners, which was invested with powers and duties of a most extensive character, with reference not only to the colonial interests, but also to the commerce and manufactures of England itself. It was made a part of its duty to keep up a correspondence with the colonial governments, and to obtain from them, from time to time, full information as to the trade and general condition of their colonies. (58) In 1697, a series of enquiries were addressed by this board to the government of Maryland, from the replies to which we collect nearly all the authentic information we possess as to its statistical condition during this period. Another set of instructions were transmitted by it, in 1699, to governor Blackiston, directing him to return to it a full account of the population, designating the number of men, women and children; and distinguishing them, as free, servants, or slaves; and also to have a general survey made of the province, and of each county; and to cause an exact map of these to be drawn and transmitted to it. We are unable to say whether these instructions were carried into effect. The existing records of the province furnish no evidence that they were, and perhaps they were not attended to, in consequence of the departure of governor Blackistone for England. An accurate map of Maryland, made

(58) Anderson's Commerce, 168 and 169. Preface to Chalmer's collection of opinions, page 7.



at that early period, is now a *desideratum* : and the propriety of soliciting an examination of the plantation records, for the purpose of ascertaining if it were ever completed, is humbly submitted to the consideration of its Assembly.

The population of the colony was not much increased during the royal government. In 1689, it contained about twenty-five thousand inhabitants ; and in 1710, only thirty thousand. (59) Immigration, the principal cause of the rapid increase in the population of the colony during the preceding era, had in a great degree ceased. "But few or no families have come into the province to reside, of late years, (says the report of the Assembly, in 1697.) Some single persons, mostly women, are of late come from England or Ireland, in the quality of servants, in all about sixty souls. Indeed, the low price which the planter hath of late been constrained to accept from the merchant, hath obliged many here, finding their industry would not supply their necessities, to try their fortunes elsewhere, to the apparent and considerable diminution of the number of our inhabitants, compared with preceding years and lists." (60) The population had never been much increased by emigrants from other colonies ; and the principal causes which had hitherto induced emigration from England, had now ceased to operate. Under the proprietary government, it was a city of refuge to all who sought shelter from civil or religious oppression. The Catholic here found peace and security ; and the non-conforming Protestant came hither, to enjoy, under a Catholic ruler, the toleration denied to him by his Protestant brethren. The enemy of arbitrary prerogative found it here in subjection to the laws ; and the friend of civil liberty discovered, in the organization and powers of the provincial Assembly, the essential features of a government based upon the people's will. In these respects, it then presented a striking contrast, not only to the condition of the mother country, but also to that of most of the sister colonies ; but the contrast had now ceased. Maryland was now under a royal government ; and its people subject to the restrictions of an established church. To the Catholic, it offered nothing but

(59) British Empire in America, vol. 1, p. 341.

(60) Report of 8th June, 1697, by the General Assembly to the Commissioners of Trade, in Upper House Proceedings, Liber FF, 942 and 944.





disqualification and penalties; and to the non-conforming Protestant, it now gave no privileges, which he could not enjoy in England, under the system of Protestant toleration established by the revolution. At the same time, many of the temporal inducements to settlers were removed. Lands were no longer given as a bounty to emigrants; and the controversies about his land rights, in which the proprietary was involved for several years after the revolution, rendered it difficult to obtain grants from him upon acceptable terms. During the first years of the royal government, the husbandry of the province appears to have been in a distressed condition, but little calculated to invite emigrants. "The trade of this province, (says the report of the Assembly in 1697,) ebbs and flows according to the rise or fall of tobacco in the market of England; but yet it is manifest and apparent that, universally, less crops are made of late than formerly; that is to say, of tobacco: for that the most and best land for that purpose, is cleared and now worn out, which indeed thereby becomes better for tillage; and the late grievous losses sustained by the death of cattle, hath sufficiently cautioned the inhabitants, by tillage to make better provision against the late unusual hard winter, and to plant less tobacco; and especially the country is in want of servants and negroes." (61) Hence the settlements were not much extended during this era; and the only new counties erected, were Prince George's, in 1695, and Queen Anne's, in 1706.

The pursuits of the colony underwent no change. Tobacco was still its staple, and almost the only article produced for exportation. <sup>Its trade and pursuits generally.</sup> Planting tobacco was the general pursuit; and besides the planters, there were some carpenters, coopers, and a few other artisans; the whole number of whom is estimated, by the report of 1697, as only constituting about the one sixtieth of the whole population. Manu-

(61) The years 1694 and 1695 are described in the provincial records as years of unusual scarcity and suffering in the colony, from the effects of which, upon its husbandry, it did not recover for several years afterwards. A regular census was taken of the cattle and hogs, which had perished during these two seasons, from which it appeared that the number of cattle lost during the time, was 25,429, and of hogs 62,373. Council Proceedings, Liber II. P, 2, p. 2d, 303.





factories were still unknown in the province; and the colonists depended entirely upon England for the most necessary articles of consumption. In a few families, coarse clothing was manufactured, out of the wool of the province, for the use of their servants; and in Somerset and Dorchester, some attempts were made by a few persons, at a period when there was an extreme difficulty in procuring English goods, to manufacture linen and woollen cloths; "which they were reduced to (says the report of 1697,) by absolute necessity, and without which many persons had perished; and this house believes, that when the like necessity falls on them or any other of this province, the like preservation will be endeavored." (62) How cautiously they vindicated their feeble attempts at manufacturing the very necessities of life, to escape the censure of the all-grasping spirit of England, ever jealous of every thing that tended, in the least degree, to weaken the entire dependence of her colonies, or to diminish the gains of her monopolies. There are no *data* from which we can collect an accurate estimate of the value of the exports of the colony. Tobacco was the only export of much value. To use the forcible expression of another, "it was their meat, drink, clothing and money." (63) The trade in this article was carried on almost exclusively with England. The trade elsewhere was very inconsiderable; and that consisted in the trade to the West Indies, in beef, pork, pipe staves, timber, and small quantities of tobacco; and in the trade with the New Englanders, for rum, molasses, fish, and wooden wares; for the traffic in which latter article the New Englanders were conspicuous even at that early period. The shipping of the colony was very inconsiderable. The trade with England was carried on entirely in English ships; and the trade with the West Indies principally in New England vessels. The military defences of the province consisted entirely in its militia; and of

(62) There is little or no woollen manufacture, (says the author of the *British Empire in America*, written about the year 1709,) followed by any of the inhabitants, except what is done in Somerset county"—Vol. 1st, 343. It would seem from this, that the attempt in Somerset, had partially succeeded in establishing the manufacture.

(63) 1st *British Empire*, 343.



naval power it was utterly destitute, there not being a single vessel in the employ of the government. (64)

From this general view of the statistical condition of the colony, it is evident that its power and resources were but little increased during this era. It was still a feeble and dependent settlement, trammelled in its trade, limited in its resources, and humble in its aims. The events of this era were unfavorable, both to the increase of its population, and its extension over the surface of the province. Hence its inhabitants still clustered along the bay and the mouths of its tributaries; and a large and fertile portion of its territory was yet unexplored. Yet it possessed all the elements of power and wealth. It enjoyed a free government. It contained an industrious, energetic, and self-relying population. It presented an extensive and unexhausted territory, to tempt the enterprise, and diversify the pursuits of its people. Untoward circumstances might retard its progress; but ultimate prosperity was assured to a colony thus situated. To the succeeding era it belonged, to call these latent energies into action; and to develop strength and resources, not only equal to her own protection, but even bidding proud defiance to the oppressions of the parent.

(64) These details, as to the trade and pursuits of the colony, are collected from the report of the governor and council to the commissioners of trade, in 1697, (which see in Council Proceedings, Liber F F, 942 to 947 :) and "the British Empire in America."





## CHAPTER IV.

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### HISTORY OF THE GOVERNMENT OF MARYLAND, FROM THE RESTORATION TO THE TREATY OF PARIS.

FROM an examination of the causes and character of the Protestant revolution in Maryland, as developed in the preceding chapter, it is manifest, that as far as the proprietary was personally connected with the transactions of that period, his government had fallen without a crime. The character of Charles Calvert, as displayed in his wise and virtuous administration of the province, for many years anterior to that revolution, is of itself sufficient for his vindication, against any suspicion of hostility to the civil or religious liberties of the people, predicated either upon the occurrence of the revolution, or the vague and unsupported accusations of "the Associators." It has been seen also, that such a suspicion is at war, with all the evidences of his conduct, and the inferences as to his motives, which can be collected from the recorded transactions of the colony itself, before and after that revolution. The addresses of the provincial Assemblies, whilst the colony was yet under his government, breathe nothing but respect for his character, and gratitude for his administration. The revolution accomplished, and the royal government fully established, the character of his administration became again and again the subject of investigation. His land rights, and private revenues derived from the province, were regarded as public grievances: yet we look in vain through the spirited transactions of the Assemblies, under the new government, in opposition to these, even for charges of mal-administration, to sustain such a suspicion. At a later period, it became the interest of the crown, in its attacks upon the proprietary governments generally, to accumulate objections to them, derived from the experience of





their operation. The government of Maryland was in the hands of men, many of whom were prominent actors in the transactions of the revolution, and were yet imbued with the religious and political excitements of that period. To such as these was the appeal made, for the experience of Maryland; and they were invited to the attack, by the restricted direction to report merely the ill conduct of the proprietaries. Interest and inclination sustained this invitation; and the memorials of abused power, if they ever existed, were yet fresh around them; yet their reply to the inquiries of the commissioners of trade, does not even insinuate the charge of proprietary oppression.

The true cause of the long continued suspension of the proprietary government, is found in the single fact, that the proprietary was a Catholic. The inhabitants of Maryland being principally Protestants, the inclinations of the colony con-  
True cause of its suspension. curred with the obvious policy of the crown, in establishing and sustaining the royal government. The repeated efforts to re-establish the pretensions of the deposed James and his more chivalrous son to the English throne, kept the minds of the English people in a state of continual apprehension, as to the security of the Protestant succession. Unfortunately for the professors of the Catholic religion, by the force of circumstances which it is not necessary to detail, their religious persuasions became identified, in the public mind, with opposition to the principles of the revolution. Their political disfranchisement was the consequence. Charles Calvert, the deposed proprietary, shared the common fate of his Catholic brethren. Sustained and protected by the crown in the enjoyment of his mere private rights, the general jealousy of Catholic power denied him the government of the province.

Perceiving the full force of this cause of exclusion, which was gaining fresh vigor from the renewed efforts of the Pretender, the  
Restoration of the government. proprietary never returned to the province, and abandoned all hopes of the restoration of the proprietary government in his own person. He submitted quietly to his own loss of power, for the sake of the religion in which he had grown up. For his children, his feelings prescribed a different course. His interests in the province would be their principal patrimony; and these were in continual jeopardy, whilst



they were divorced from the powers of government. For his family, he saw nothing in prospect, but disfranchisement, and perhaps ruin, in adherence to a proscribed faith; and yielding to the anxieties of a parent, he induced his son and heir apparent, Benedict Leonard Calvert, to embrace the doctrines of the established church. By his death, on the 20th of February, 1714, (old style) at the advanced age of eighty-four, the succession to his estates in the province was cast upon his son, who was then a member of the English parliament. *Benedict Leonard Calvert* survived his father scarcely long enough to be formally recognized as proprietary; and by his death, on the 16th of April, 1715, the title to the province devolved upon his infant son, *Charles Calvert*. This son, as well as the other children of the late proprietary, after the admission of the latter into the Protestant church, were educated in the doctrines of the established religion; and therefore the causes for the suspension of the proprietary government had now ceased to exist. The claims of the Baltimore family were now fully acknowledged, and sustained by George I., the new monarch of England; by whom the proprietary government was restored, in May, 1715, in the person of the infant proprietary. The administration of it was immediately assumed, in his name, by his guardian, lord Guilford; and a commission for the office of governor issued, under the joint names of the proprietary and his guardian, to John Hart, the late royal governor of the province.

The restoration of the proprietary government, was not marked either by open discontent, or extraordinary rejoicing, on the part of the people of the province. An interval of Its effects upon the colony. twenty-six years had separated them from that government. The causes of the excitement, which occasioned its overthrow, had in a great degree subsided; but with these had also passed away, many of the recollections which endeared it and would have welcomed its return. The proprietaries, who had administered that government, were gone; and it was now restored in the person of a youth and a stranger, who had yet to win the personal attachment of his people. Upon a government of laws, such as that of Maryland, a mere change of its head has but little effect. The only apprehensions, even in the minds of the more timid, related to the security of the establish-





ed religion; and these did not look to immediate danger, inasmuch as the new proprietary was an open professor of that religion. Yet these apprehensions existed in the minds of some, and were now seized upon, to justify the passage of acts, giving to the new government a character more exclusively Protestant even than that of the royal government which preceded it.

A *test oath*, requiring the abjuration of the Pretender's claims, had been introduced in 1704, which was kept up during the continuance of the royal government. (1) But it was

Exclusive character given to it by new test oaths.

reserved for the period of the restoration, to establish a test-oath, requiring not only the abjuration of the political claims of the Pretender, but also the renunciation of some of the essential doctrines of the Catholic church. The succession to the English throne, as regulated by parliament, having passed into the Brunswick family in the person of George I., new test oaths were prescribed in England for the further security of the Protestant succession; (2) which, however well adapted to the condition of England, were not demanded by the circumstances of the colony, or the feelings and power of the Catholic interest within it. The restoration of the proprietary, who was as yet a novitiate in the Protestant religion, was, however, the signal for alarm in the province. The predisposition to this was increased, immediately after the restoration, by the silly act of a few persons in drinking the health of the Pretender, conduct which savored more of folly than of treason. The apprehension of a plot for the establishment of the Pretender's power in the colony, was ridiculous; and the apprehension of danger from it, still more so. It was, however, enough to induce the Assembly of the province to follow the example of the English parliament. At the first session of Assembly held under the restored government, an act was passed, which introduced the qualifying test oaths of England in all their rigor, and effectually excluded the Catholics from all participation in the government. All persons, holding any office or place of public trust within the province, were, by this act, required to take certain oaths, called the oaths of allegiance, abhorrency, and ab-

(1) Act of April, 1704, chap. 11, which was superseded by the act of 1715, chap. 30.

(2) Statute 1st George 1st. chap. 13.





juramentum; which substantially consisted, in acknowledging king George as the supreme head both of church and state, in denying the right of any foreign power or prelate to exercise any spiritual jurisdiction within the English dominions, and in abjuring the claims of the Pretender; and they were also required to declare their disbelief of the doctrine of transubstantiation. None were capable of holding offices or places of trust, who refused to take these tests; and in case of such refusal, if the person refusing attempted to hold or exercise any such office, his commission or appointment was declared void, and he himself subjected to severe penalties. The government of Maryland thus became, and continued until the revolution, exclusively Protestant; and the Catholics were taxed to sustain a religion and a government, to which they were emphatically strangers. (3)

From the re-establishment of the proprietary government until the treaty of Paris, its internal administration presents but few events, which interest by their details, or instruct by their results. Apart from the mere wars of words between the provincial assemblies and the governors, or between the two houses of Assembly, about their respective privileges and powers, or the constitutional rights of the province, it was a period of almost unbroken tranquillity. The laws and institutions of the colony now acquired a settled and

General results  
of the proprietary  
administration  
during this  
era.

(3) Act of 1716, chap. 5th. This system of disqualifications was carried still further by the act of 1718, chap. 1st. All professing Catholics were rendered incapable of voting, unless they qualified themselves, by taking the several test-oaths, and making the declaration, prescribed by the act of 1716; and all judges of elections were empowered to tender these oaths and declaration, to "any person suspected to be a Papist or popishly inclined;" and upon his refusal thus to qualify, they might reject his vote. These were the mere *legal* disqualifications of the Catholics; but they fell short of the *actual* oppressions practised upon them during many periods of this era. When laws degrade, individuals learn to practise wanton outrage; the former stigmatize, the latter catch its spirit, and make its example an excuse for oppression. Hence the personal animosity of the Protestants against the Catholics of Maryland, was at one period carried to such an extent, that, as we are informed, the latter were even excluded from social intercourse with the former, were not permitted to walk in front of the State House, and were actually obliged to wear swords for their personal protection.—Life of Charles Carroll of Carrollton, in Biography of Signers, 8th vol., 240.



permanent character, and a degree of consistence which had hitherto been unknown in their history. The reader, who has had occasion to examine the legislation of Maryland before this period, must have remarked its peculiarly fluctuating character. All was temporary; all was subjected to repeated changes. This state of the provincial legislation was, in some measure, the consequence of that continual variation in the condition and pursuits of a colony, which always marks the first years of its establishment. Yet even this is not sufficient to account wholly for it. There was a general disinclination, in Maryland, to the enactment of permanent laws. No change could be made in such laws, but by some new act of legislation requiring the proprietary's assent; and the Assemblies were always unwilling to render themselves dependent upon his will, for relief from a law, which might be found, by experience, to be inconvenient or oppressive. They preferred temporary laws, which would expire by their own limitation, and might be re-enacted if found salutary. Their legislation thus assumed the character of a system of *expedients*. As to revenue bills, this discreet jealousy was cherished down to the latest period of the colonial government; but the legislation upon mere private rights and remedies, now acquired a more permanent character. The last Assembly which was held under the royal government, the Assembly of 1715, is as conspicuous in our statute book, even at this day, as "the blessed parliament" in that of England. A body of permanent laws was then adopted, which, for their comprehensiveness and arrangement, are almost entitled to the name of "a code." They formed the *substratum* of the statute law of the province, even down to the revolution; and the subsequent legislation of the colony effected no very material alterations in the system of general law then established. Several of the important statutes of that session are in force at this day. The history of the several provincial offices, hereafter to be presented, will also exhibit a more regular and settled organization of them, about the commencement of this era. The internal administration of the government from this period, was, therefore, in general, but the regular and ordinary operation of established forms: and presents nothing worthy of record, in the history of that government, but the unceasing and unwearied vigilance of the Assem-





blies and the people, in preserving the spirit of those forms, and in restraining the power of their rulers within their proper orbits. At every period of this era, the eye rests upon memorials of the constitutional liberty of Maryland.

The controversy about the extension of the English statutes, originated in 1722; and the discussions connected with it, occupied nearly the whole attention of the colony until its termination. The origin of that controversy, the principles involved in it, and the manner of its termination, have already been detailed; (4) and the reader, in recurring to it, will perceive, that in the inquiries to which it led, and the principles it brought into view, it extended far beyond the immediate subject. It ranged over all their chartered rights and privileges, and shed over these all the force and perspicuity which the ablest writers and debaters of the province could impart. It familiarized the people of the colony with the character and extent of these rights, and instilled into their minds just notions of government. A Trojan war in its duration, it nourished, in the breasts of the colonists, a spirit of stern and sturdy adherence to their rights, which was perceived and felt in all the after transactions of the colony.

A new occasion for its exercise soon presented itself. From the close of this controversy about the statutes in 1732, until 1739, the history of the colony presents nothing of moment, but the transactions connected with the disputed boundaries between it and the province of Pennsylvania, of which a full account has already been given. (5) In 1739, began the dissensions about the proprietary revenue, between the lower house of Assembly and the governors, which endured until the downfall of the proprietary government. The origin, nature, and results of the contests, relative to the tobacco and tonnage duties, have already been fully described. (6) It will therefore suffice to remark, that at the session of 1739, the levying of these duties by the proprietary was brought under the consideration of the Assembly. The introduction of this subject led, as usual, to a

(4) Supra, Introduction, chap. 3d, 121 to 128.

(5) Supra, Introduction, chapter 1st.

(6) Supra, 176 and 178.





thorough examination of the proprietary encroachments upon the rights of the colony; and a series of resolves were then adopted by the lower house, denouncing as manifestly arbitrary and illegal, the levying of these duties, the settling of officers fees by proclamation or ordinance, and the creation of new offices with new fees without the assent of the Assembly. (7) That house resolved, therefore, to employ an agent resident at London, for the protection of the colony and the redress of these grievances; who should be empowered to bring them immediately under the consideration of the king in council, in the event of the proprietary's refusal to remove them. (8) The act proposing the appointment of an agent being opposed by the upper house, the measure was vindicated by the lower house, in a message worthy of preservation for its laconic boldness. "The people of Maryland, (say they) think the proprietary takes money from them unlawfully. The proprietary says, he has a right to take that money. This matter must be determined by his majesty, who is indifferent to both. The proprietary is at home, and has this very money to enable him to negotiate the affair on his part. The people have no way of negotiating it on theirs, but by employing fit persons in London to act for them. These persons must be paid for their trouble; and this bill proposes to raise a fund for that purpose." (9) This bill was finally rejected by the upper house; but the measure was still adhered to, and accomplished by the lower house. Messrs. James Calder, Charles Carroll, Vachel Denton, Thomas Gassaway, Philip Hammond, Edward Sprigg, Turner Wooton, Osborn Sprigg, and John Magruder, were now appointed as a committee of that house, with power to employ an agent at London; to whom, they were instructed to transmit copies of all the laws and documents, relative to the subject in controversy. At the same period, an address to the proprietary, and an address to the king, were prepared by that house; the latter of which was to be presented, only in the event of the proprietary's refusal to accede to their requests. These decisive measures gave rise to an angry controversy between the governor and the lower house, which extended its influence to all the intercourse between them for seve-

(7) Journals 9th June, 1739.

(8) Journals of June 5th, 1739.

(9) Journals of June 9th, 1739.



ral years. The Assembly was immediately prorogued, and every effort used by the governor and council, to prevent the committee from accomplishing their duties. Contending that all the powers of this committee had ceased, by the prorogation of the house; they instructed the officers of the province, to disregard every command or request, made under the authority of that committee. All the efforts of the committee to procure the necessary records, were thus frustrated, and their proceedings thus suspended, until the session of 1740. At that session, the lower house returned with renewed vigor to the purposes of the session of 1739, and at length obtained from the executive, a reluctant grant of free access to the records. Being thus furnished with the necessary documents, Ferdinando John Parris, of London, was now retained as the agent of the colony; to whom these documents and the addresses of the lower house were transmitted. The address to the proprietary, was responded to by him in a reply of the most conciliatory character, which was submitted to the Assembly in May, 1744. Professing the utmost willingness to redress their grievances, he assured the Assembly of his confidence in the people of the province; in terms as gratifying to them, as they were honorable to himself. "As for any person's presuming to represent his majesty's faithful subjects of England, and my good tenants, as a factious or clamorous people, or disaffected to his majesty, or ill disposed to me, you may be assured, (says he) they have met, and will meet with that discountenance they deserve; and as you have lately given testimony of your sincere attachment to his majesty's person and government, and are so kind as to assure me, you never had it in your thoughts to abridge me in any of my rights, I may with great truth likewise affirm, that the laws have been, and shall be, my only guide." (19) Our records do not inform us what was the issue of the address to the crown, nor even whether it was ever presented. We learn from them only, that these negotiations never led to any definitive adjustment of the matters in controversy, either by the proprietary or the crown; and that after this period, the efforts for redress in this mode, appear to have been abandoned by the Assembly. Some of the grievances complained of, were





now removed. Fines upon alienations by devise, had been formally relinquished by the proprietary, in 1742; (11) and officers fees were established by law, at the session of May, 1747. (11) But the tobacco and tonnage duties, which were the principal subjects of remonstrance, were collected until the close of the proprietary government; and their collection formed a standing theme of complaint, to which the lower house of Assembly continually recurred, as a justification for their opposition to the measures of the government, or for their refusal to grant further supplies.

During the progress of these negotiations, there were certain transactions of the colony, connected with its foreign relations, which are worthy of notice, not only for the objects they accomplished, but also for the striking illustration they afford, of the lofty stand then taken by the lower house of Assembly, and of the high notions which it entertained as to its powers and prerogatives. The Six Nations of Indians have already been alluded to, as occupying a border position between the French and English colonies, which gave them a power and influence in the struggles between these colonies, always to be dreaded, and always to be conciliated. Immediately after the first settlement of the French along the lakes of Canada, a relentless and sanguinary warfare was waged between them and these tribes of Indians. This engendered an enduring hostility, which concurred with the interests of the Six Nations, in originally inclining them to the side of the English colonies. Yet it required all the address of the English to retain these savage allies, against the perfidious arts and seductive proffers of their enemies. The Six Nations soon understood the advantages of their position; and they became mercenaries, whose assistance was to be bought. In every moment of emergency, it was found necessary to conciliate them, and to ensure their assistance by the distribution of presents; and a system of contribution for the purchase of these presents, was soon established in the more exposed colonies, which was kept up until the extinction of the French power by the treaty of Paris. Maryland was one of the states which generally co-operated

(11) *Supra*, 175.





with New York, in the contributions for this purpose. These tribes also laid claim to a considerable portion of the territory of Maryland, lying along the river Susquehanna and Potomac; and although their claims had not yet been asserted in such a manner as to bring them into open collision with the government of Maryland, they were yet a source of discontents which it was expedient to remove. At the session of 1742, the subject being brought under the consideration of the Assembly, the lower house concurred with the governor, in his views as to the propriety of extinguishing these claims by treaty with the Six Nations, and assented to the deputation of commissioners to Albany for the purpose of negotiating it. That house, however, claimed the right of participating in the appointment of the commissioners; and accordingly appointed, as commissioners on their part, Dr. Robert King and Charles Carroll, to act in conjunction with such as might be appointed by the governor and council. (21) To their own commissioners they gave private instructions, which were very full and explicit as to all the objects of the mission, and by which they were restricted as to the amount to be expended in presents. (13) The exercise of these powers gave great offence to the governor, by whom they were regarded as infringements of his prerogatives. He therefore withheld from them his sanction; and the negotiation was consequently suspended, until the session of May, 1744. At that session, he urged upon the lower house, with great earnestness, the propriety of withdrawing their instructions to the commissioners; but all his entreaties and remonstrances were unavailing. They adhered with unshaken firmness to the right which they had claimed, as incident to their control over the public interests and the public revenue; and the governor, highly incensed at their pertinacity, was at length driven to the necessity, of appointing the commissioners upon his own responsibility, and of accomplishing the objects of the mission by the ordinary revenue of the government. The commissioners appointed by him were, Edmund Jennings, Philip Thomas, Robert King, and Thomas Colville, by whom a treaty was concluded with the chiefs of the Six Nations, at the town of Lan-

(12) Journals of 26th and 29th October, 1742.

(13) These instructions are published at large, on the Journals of 30th May 1744.



caster, Pennsylvania, on the 30th June, 1744, under which their claims to the territory of Maryland were utterly extinguished. (14)

From the period of these transactions until the commencement of the French war, in 1754, the history of the province presents no events calculated to illustrate, either its government, or the character and condition of its people. This interval was characterised, by a peculiarly tranquil and prosperous condition of the colony. In the war with France, which was terminated by the treaty of Aix-la-Chapelle, Maryland scarcely participated. Its designs and operations during the interval between that treaty and the French war.

(14) This treaty has sometimes been referred to, as if it had definitively adjusted the western limits of the State. It will appear, however, from an examination of it, that it does not profess to determine these limits, but merely extinguishes the Indian claims throughout the Maryland settlements, without drawing into question the extent of the province. The following is the tenor of that part of the treaty, which relates to the cession.

"Now know ye, that for and in consideration of the sum of three hundred pounds, current money of Pennsylvania, paid and delivered to the above named sachems or chiefs, partly in goods and partly in gold money, by the said commissioners, they the said sachems or chiefs, on behalf of the said nations, do hereby renounce and disclaim to the right honorable the Lord Baltimore, lord proprietary of the said province of Maryland, his heirs and assigns, all pretence of right or claim whatsoever, of the said Six Nations, of, in, or to any lands that lie on Potomac, alias Cohongaroutan, or Susquehanna rivers, or in any other place between the great bay of Chesapeake and a line beginning at about two miles above the uppermost fork of Cohongaroutan or Potomac on the north branch of the said fork; near which fork, Captain Thomas Cresap has a hunting or trading cabin, and from thence by a north course to the boundaries of the province of Pennsylvania, and so with the bounds of the said province of Pennsylvania to Susquehanna river; but in case such limits shall not include the present inhabitants or settlers, then so many line or lines, course or courses, from the said two miles above the fork, to the outermost inhabitant or settlement, as shall include every settlement and inhabitant of Maryland, and from thence by a north line to the bounds of the province of Pennsylvania, shall be deemed and construed the limits intended by these presents; anything herein before contained to the contrary, notwithstanding. And the said sachems or chiefs do hereby, on behalf of the said six united nations, declare their consent and agreement to be, that every person or persons whatsoever, who now is, or shall be hereafter, settled or seated in any part of the said province, so as to be out of the limits





rations were too remote, to menace immediate danger to herself, or to induce her to depart from her established policy of embarking in the general warfare of the colonies, only so far as it was necessary for her own defence and security. Her participation in it, was therefore limited to a small contribution of money. The internal relations of the colony, during this interval, were equally free from embarrassments. The causes of dissension between the proprietary and the Assemblies, although not removed, were lulled to repose; and the colony seemed to rest with confidence upon the moderation and justice of the proprietary. His assurances of his regard for their rights and interests, and of his willingness to protect them in any manner which would not compromise his own, were stamped with a sincerity that for a time allayed the public discontents; and before they were revived, the colony was under the government of a new proprietary.

By the death of *Charles Lord Baltimore*, (the fifth of that title) on the 23d of April, 1751, the government of Maryland passed

into the hands of his infant son *Frederick*. Charles Calvert had governed the province for thirty-six years, with a spirit that acquired for his administration

the general character of virtue and moderation. The period of his government, was one fruitful in sources of internal dissension, which no policy could have averted. The lower house of Assembly now began to claim an equal rank, in point of privilege, with the English house of Commons; and their claims were, in some instances, advanced not only beyond what had been their accustomed powers, but even to an extent unwarranted either by their parallel or the charter of the province. The very novelty of some of their pretensions, made them more jealous of encroachments upon them; and the sarcasms and ridicule, with which they were injudiciously resisted by the

aforesaid, shall nevertheless continue in their peaceable possessions free and undisturbed, and be esteemed as brethren by the Six Nations. In witness whereof, the said sachems or chiefs, for themselves, and on behalf of the people of the Six Nations aforesaid, have hereunto set their hands and seals, the thirtieth day of June, in the year of our Lord, one thousand seven hundred and forty-four.





governors of the province, and particularly by governors Bladen and Ogle, contributed to sustain a constant jealousy between the Assemblies and the executive, which often fancied danger even where there was no cause for apprehension. Yet this jealousy, although it awakened occasional discontents, did not degenerate into settled hostility, nor abate the attachment of the colony to the government and person of the proprietary; and in its ultimate results, it did but the more endear its colonial institutions, by bringing into view and contrast their peculiar freedom. The proprietary himself, was never charged with any deliberate designs against their liberties; and the occasional differences between him and his people, were followed by a renewed attachment, the more ardent from its very suspension. The death of the proprietary, in this interval of tranquillity, left his character in the fullness of its honor; and the memory of his virtues remained, to renew the attachments of the colony in the person of his infant son.

The course of Maryland, during the French war, which commenced in 1754, and was closed by the treaty of Paris, in 1763,

*Course of Mary-  
land during the  
French war, of  
1754.*

appears to have been but little understood by most of the writers who have treated of the events of that war. By the British government, it was considered one of obstinate and unreasonable opposition to its wishes and the general interests of the colonies. By some of the sister colonies it was deeply censured, as a selfish disregard of the mutual obligations of the colonies to protect each other: and in some of them, so high did the public indignation mount, that the design of applying to parliament to coerce her to come heartily into the common cause was in agitation. (15) Her course is rendered still more memorable by its ultimate results. The want of her efficient co-operation, was seriously felt in several of the campaigns of this war. The requisitions of the crown for the supply of men and money, although backed by the entreaties and remonstrances of her governors, were, in almost every instance, disregarded by the Assembly; and the repeated disregard of these, made the English government fully sensible of the inefficiency of the requisition system, to give it command of

(15) Franklin's Works, 4th vol. 123; 1st Pitkin's United States, 204.



the resources of its colonies. That government now discovered that the humble colonies, whom it had hitherto looked upon as mere purveyors for its commerce, and instruments of its ambition, were composed of a resolute and self-willed people, claiming for themselves the exclusive rights of taxation and internal regulation, and the personal privileges of the most favoured English subjects. To be thwarted by these, was more than the haughty ministers of England could brook. Mr. Pitt himself, who afterwards became the champion of American liberties, was so highly incensed at the course of Maryland, that he avowed his intention of bringing the colonies into such subjection, when peace should be restored, as would enable the English government to compel obedience to their requisitions. (16) The ill feelings which it excited in some of the other colonies, suggested and encouraged this design; and it ultimately assumed a definite form, by the passage of the Stamp Act. That act had other designs than the mere collection of revenue from the colonies. It was a mere experiment, in order to the full establishment of the supremacy of parliament over the colonies; and that experiment was, in a great measure, prompted by the neglect of the crown requisitions, during the preceding war, in several of the colonies, but especially in Maryland. Hence we find, that in the examination of Dr. Franklin, in 1766, when the repeal of the Stamp Act was under consideration, the conduct of Maryland, during that war, was brought up as one of the objections to its repeal. (17) If the requisitions of the crown had been fully and

(16) 1st Gordon's America, 97.

(17) One of the queries propounded to him, during that examination, related to the course of Maryland in refusing to furnish her quotas. Franklin replied to this query in a manner which shows that he understood and appreciated the conduct of the Maryland Assemblies. "Maryland," says he "has been much misrepresented in that matter. Maryland, to my knowledge, never refused to contribute or grant aids to the crown. The Assemblies, every year during the war, voted considerable sums, and formed bills to raise them. The bills were, according to the constitution of that province, sent up to the council or upper house for concurrence. Unhappy disputes between the two houses, arising from the defects of that constitution principally, rendered all the bills but one or two abortive. It is true, Maryland did not then contribute its proportion, *but it was, in my opinion, the fault of the government, not of the people.*"—Franklin's Works, 4th vol. 122.

In several of the Pamphlets, written in vindication of the Stamp Act, the





promptly complied with in all the colonies, the necessity of strengthening her control over them, would not have been so urgent: and in the absence of a palliative for the act, the dangerous expedient of colonial taxation would scarcely have been ventured upon, even by a needy ministry. The events of this period are therefore highly interesting; and require such a detail of them, as will fully elucidate the conduct of the colony.

This war, so memorable for its results, was the last great struggle for mastery between the French and English colonies of North America. The limits between the Origin and objects of this war. French and English possessions, were vague, or undefined; and every effort to render them definite, had hitherto proved ineffectual. On the north, Nova Scotia had been ceded by France to England, in 1713, under the treaty of Utrecht; but the exact limits of this cession, were left to be ascertained by commissioners appointed under the treaty. Conflicting views, as to its extent, soon arose. On the side of England, it was contended, that Nova Scotia, as ceded to her, embraced all the territory lying north of her former possessions, and between them and the St. Lawrence; whilst it was alleged, on behalf of France, that it included only the peninsula formed by the Bay of Fundy, the Atlantic ocean, and the Gulf of St. Lawrence. The treaty of Aix-la-Chapelle found these conflicting claims still unreconciled; and being formed upon the principle of restoring all conquests to the "statu quo ante bellum," it again referred these differences to the adjustment of commissioners. The negotiations of the commissioners were protracted until the occurrence of events, which enkindled a contest for territory, far more extensive in its aims. The French settlements of Louisiana had now become populous and thriving, and were rapidly extending themselves along the Mississippi. As the pre-occupants of the Mississippi, the French now laid claim to all the territory watered by that extensive river and its tributaries, and contended for the Alleghanies as the eastern limits of their possessions. On the other

course of Maryland was continually appealed to, as showing the inefficiency of the ordinary mode of raising revenue in the colonies, to meet the purposes of the English government; and it was always described as one of wilful disregard of the general safety.—See Mr. Dulany's Pamphlet against the Stamp Act, page 21.





hand, the English claims, and some of the English grants, extended from the Atlantic to the Pacific. In this more momentous controversy, the differences about their northern boundaries were soon merged. The French governor of Canada had the sagacity to perceive, and the energy to prepare for, the crisis which was rapidly approaching. His fortifications were extended along the lakes; and he now conceived the bold design of forming a complete communication between Louisiana and Canada, by a chain of fortifications extending along the Mississippi. The open conflict between the two powers was hastened on by occurrences, which left no time for the accomplishment of this design, or the silent and peaceable pre-occupation of the territory claimed. A grant, located in the debateable territory west of the Alleghanies, had been made by the English government, in 1749, to an association of individuals of wealth and influence, styling themselves the Ohio Company. To accomplish its commercial purposes, trading posts were soon established under the direction of this company, and extended even to the Ohio. To the French, this was the signal for alarm; and it was followed by prompt and decisive measures of reprisal on their part, indicating their full determination to maintain their claims by the strong hand. Some of the English traders amongst the Indians, were seized and imprisoned; and one or two of the fortified trading posts of the company, were reduced and pillaged. A communication was also opened, by the way of the Alleghany river, between the French posts on the lakes and the Ohio, and troops stationed along the line of communication. These unequivocal acts of hostility, removed all doubts as to the ultimate designs of the French. Indignant at these outrages, the governor of Virginia despatched Colonel Washington on a special embassy, for the purpose of requiring the immediate evacuation of the invaded territory. His demands were met by a reply, which left no room to hope for an amicable surrender of the French claims. In this emergency, hostilities were inevitable; and the safety of the English possessions demanded the utmost promptitude and vigor in their prosecution.

Such were the primary causes of the war, in which Maryland was now required to embark. It was, in its origin, a mere contest for territory, in which the province had no interest, except



Policy of the Assembly at the opening of this war. that of keeping the French and their savage allies at a distance from her border. To Virginia it was more important; for it involved her right to an extensive territory; and this consideration, added to the influence of the members of the Ohio Company, induced her to enter warmly into the preparations for hostilities. The English government perceived, at once, the dangerous consequences likely to result to her possessions, from these encroachments, if not instantly repelled: and therefore she entered fully into the spirit of Virginia. Upon the first manifestations of the designs of the French, circulars were addressed by the Earl of Holderness (then secretary of state) to the several colonies, enjoining it upon them generally, to resist by force all attempts to intrude upon or make settlements within the British possessions. That addressed to the colony of Maryland, was submitted to its Assembly, at October session, 1753; but its requisitions, although sustained and urged by its executive, were without effect. The lower house assured the governor, "that they were resolutely determined to repel any hostile invasion of the province by any foreign power; and that they would cheerfully contribute to the defence of the neighboring colonies, when their circumstances required it; but they did not deem this a pressing occasion." (18) This language indicated the course afterwards pursued by the colony, and their utter repugnance to embarking in a war of mere ambition. The commands of England, the entreaties of Virginia, and the remonstrances of their governor, were all insufficient to induce the house of Assembly to depart from this policy; and Virginia was therefore compelled to enter unassisted into the campaign of 1754. (19)

Yet whilst this colony thus withheld herself from active co-operation in enterprises not called for, by any direct attack upon her settlements, or those of the sister colonies, but merely intended to anticipate their occurrence; she was not unmindful of her obligations to contribute to the common defence. The requisitions of the English government, so far as they enjoined it upon her to

Transactions of the Province in connection with the proceedings of the Albany Convention.

(18) Journals of the House of Delegates, 5th and 6th November, 1753.

(19) Journals of House of Delegates, 26th February, and 5th and 8th of March, 1754.





send commissioners to the general convention at Albany, with presents to secure the assistance of the Indians, were cheerfully complied with. The sum of £500 was appropriated by the Assembly, for the purchase of presents, and commissioners were deputed by the governor to represent Maryland in that convention. The objects and operations of that convention, extended far beyond the purpose contemplated by Maryland in the appointment of her commissioners. The necessity of *union* amongst the colonies, to meet the emergencies of the period, was forcibly inculcated, in the circulars from the secretary of state, and the instructions from the commissioners of trade, under which this convention was assembled; but by the Assembly of Maryland, these recommendations were regarded, as merely enjoining concerted and harmonious action amongst the colonies, for the common defence. The formation of a confederated government, was not even remotely contemplated as one of their objects; and if this design had been disclosed, at any time before the deputation of her commissioners, she would, most probably, have receded from the whole measure. Her people were peculiarly attached to their charter-government; and jealous of all measures, which tended in any degree to diminish its independence. At every period of her colonial existence, the plan of a confederated government was therefore resisted with great unanimity. Yet such a government over the English colonies, had always been a *desideratum*, in all their operations for a general defence; and the necessity of it, was peculiarly felt at this critical juncture, when they were destined to encounter the undivided energies of the French power in America. Deeply sensible of this, the members of the Albany convention, as soon as they had concluded their negotiations with the Indians, unanimously resolved, "That an union of the colonies was necessary for their preservation." Various plans of union were then submitted, of which the one ultimately adopted, was that proposed by Dr. Franklin. To enter into the details of this scheme of confederacy, would lead us too far away from the purposes of this work. The proceedings of that convention, and the general features and tendencies of the government proposed by it, are already matters of history, and have





been described and illustrated by able writers. (20) It shared the usual fate of all schemes of compromise, addressed to conflicting jealousies. It was disapproved of by the crown, because it vested too much power in the colonies; and rejected by the colonies, because it gave too great a control over their operations to the crown. In Maryland, it encountered the most decided opposition. When submitted to the Assembly, it was unanimously disapproved of by the lower house, "as tending to the destruction of the rights and liberties of his majesty's subjects in the province." An address to the governor was at the same time adopted, which contains the following forcible remonstrance against this plan of union. "We do not conceive (says the address) that the commissioners were intended, or empowered, to agree upon any plan of a proposed union of the colonies, to be laid before the parliament of Great Britain, with a view to an act, by which one general government may be formed in America; and therefore do not deem it necessary to enter into any particular notice of the minutes of their proceedings relative to it. But as it appears to us, we cannot, in consistence with our duty to our constituents, refrain from remarking, that the carrying of that plan into execution, would ultimately subvert that happy form of government to which we are entitled under our charter, (the freedom of which was, doubtless, the great inducement to our ancestors, to leave their friends and native country, and venture their lives and fortunes among a fierce and savage people, in a rough, uncultivated world;) and destroy the rights, liberties, and property, of his majesty's loyal subjects of this province." (21)

During the progress of these transactions, the results of the campaign of 1754 had given to the French war a new aspect.

The Virginia forces under Colonel Washington had been captured at the Little Meadows; and Fort Du

Assembly proceedings in July, 1754.

Quesne, just erected by the French at the site of the present town of Pittsburgh, menaced danger to the frontier settlements both of Virginia and Maryland. The Assembly was

(20) This plan of union, and the reasons which induced its illustrious author to give it the form proposed, will be found at large in 4th vol. of Franklin's Works.—See also 1st Pitkin's United States, 143 and 429.

(21) Journals of House of Delegates, of 10th March, 1755.



immediately convened; and the propriety of making instant provision for the defence of the frontier, and the protection of the Indian allies, was urged upon it by the governor in the most earnest and forcible terms. (22) The occasion was one of that very character, previously indicated by the colony, as entitled to her exertions; and the Assembly, true to its obligations and professions, was now as prompt, as it had previously been remiss. The sum of £6000 was immediately appropriated, to be applied, under the direction of governor Sharpe, to the defence of the colony of Virginia, and the relief and support of the wives and children of the Indian allies. (23)

From this period until the commencement of the campaign of 1756, Maryland bore no part in the contest; but her passiveness is not attributable to her unwillingness to aid the common cause. From the moment at which it became manifest that the security of the colonies was endangered, her Assemblies were ever ready to make such appropriations for the general defence, as her circumstances would permit; but, unfortunately, disputes now arose between the two houses of Assembly, as to the mode of raising the revenue to meet these appropriations, which resulted in defeating the appropriations themselves. Under the supply bill of 1751, various taxes were imposed, to constitute a sinking fund for the redemption of the issues authorized by that act. Amongst these was an increased tax on ordinary licenses, and a duty on imported servants, embracing, by its general terms, transported convicts. In the subsequent supply bills, as passed by the lower house, these duties were continued as a part of the sinking fund for the discharge of the new appropriations. Their continuance was resisted by the governor and upper house, and as strenuously insisted on by the lower; and hence the defeat of the contemplated appropriations of this period. The messages connected with this controversy, form a highly interesting portion of our public documents, and reflect great lustre upon the lower house, from the ability and firmness which characterize them. The

(22) Governor's Message in Journal of House of Delegates, of 17th July, 1754.

(23) Act of July, 1754, chap. 9th.





nature of the controversy will show, that they were at issue upon important principles.

The power to grant ordinary licenses, had always been claimed and exercised by the governors of the province, as a branch of proprietary power; and the revenue arising from it, was claimed, and had generally been collected, as a part of the private revenue of the proprietary. In some of the early laws, however, this revenue had sometimes been applied to public uses; and upon these, and the nature of the fund itself, the lower house soon founded a claim to it, as public revenue, always subject to their application. The urgency of the occasion, had induced the governor and council to assent to the duty on these licenses imposed by the act of 1751; but the attempt to continue it was strenuously resisted as an invasion of proprietary prerogative. An open conflict as to the nature of this fund, at once ensued; and it was now solemnly resolved by the lower house, "that the fines arising on ordinary licenses, were, and always had been, the undoubted right of the country; and that the lord proprietary of the province, by his prerogative, had no right to impose, or levy by way of fine, tax, or duty, any sum of money on any person whatsoever." To the principles of this resolve they sturdily adhered.

Controversy about the duty on ordinary licenses.

The objections to the duty on *convicts*, appear to have been elicited by the controversy about the license duty, and to have been advanced by the upper house, as a mere cover to their more serious objections to the latter. The practice of transporting convicts into the colonies, was introduced at an early period, and had been very far extended by the statutes passed in the reign of George I., authorizing transportation as a commutation punishment for clergyable felonies. The number of transported convicts had so much increased under these statutes, that at this period there were not less than three or four hundred annually transported into Maryland. (21)

Character of that relative to the duty on convicts.

(21) 1st Pitkin's U. States, 133. A writer in the Maryland Gazette of 30th July, 1767, gives us a higher estimate. "I suppose (says he) that for these last thirty years, communibus annis, there have been at least 600 convicts per year imported into this province: and these have probably gone into 400 families." After answering some objections to their importation





The introduction of such a population, was a source of great complaint amongst the colonists; and although they did not venture to put themselves in direct opposition to the statutes, by prohibiting the importation of convicts, they deemed it a fit subject for taxation. The manner of their importation encouraged this measure. The convicts were transported by private shippers, under a contract with the government; and were sold

because of the contagious diseases likely to be communicated by them, he further remarks—"This makes at least 400 to one, that they do no injury to the country in the way complained of: and the people's continuing to buy and receive them so constantly, shows plainly the general sense of the country about the matter; notwithstanding a few gentlemen seem so angry that convicts are imported here at all, and would, if they could, by spreading this terror, prevent the people's buying them. I confess I am one, says he, who think a young country cannot be settled, cultivated, and improved, without people of some sort: and that it is much better for the country to receive convicts than slaves. The wicked and bad amongst them, that come into this province, mostly run away to the northward, mix with their people, and pass for honest men: whilst those more innocent, and who came for very small offences, serve their times out here, behave well, and become useful people."

This attempt to justify the *Convict Trade*, elicited two able and spirited replies over the signatures of "Philanthropos" and "C. D." appearing in Greene's Gazette of 20th August, 1767, in which the writer of the first article is handled "with the gloves off." "His remarks (says Philanthropos) remind me of the observation of a great philosopher, who alleges that there is a certain race of men of so selfish a cast, that they would even set a neighbour's house on fire, for the convenience of roasting an egg at the blaze. That these are not the reveries of fanciful speculatists, the author now under consideration is in a great measure a proof; for who, but a man swayed with the most sordid selfishness, would endeavor to disarm the people of all caution against such imminent danger, lest their just apprehensions should interfere with his little schemes of profit? And who but such a man would appear publicly as an advocate for the importation of felons, the scourings of jails, and the abandoned outcasts of the British nation, as a mode in any sort eligible for peopling a young country?" In another part of his reply he remarks, "In confining the indignation because of their importation to a few, and representing that the general sense of the people is in favor of this vile importation, he is guilty of the most shameful misrepresentation and the grossest calumny upon the whole province. What opinion must our mother country, and our sister colonies, entertain of our virtue, when they see it confidently asserted in the Maryland Gazette, that we are fond of peopling our country with the most abandoned profligates in the universe? Is this the way to purge ourselves from that false and bitter reproach, so commonly thrown



in the colonies for the advantage of the shipper. (25) Their transportation was, therefore, a most gainful species of commerce, in the hands of private individuals; and as such, was as fair a subject for the imposition of a duty, as imported merchandize. In Pennsylvania, a poll tax was imposed on imported convicts as early as 1729; and in Virginia and Maryland, attempts had been made at a still earlier period, to restrain the evils arising from their importation. (26) When the general duty on imported servants was imposed by the act of 1751, no objection was made to it by the upper house, because it embraced convicts; and the duty was collected for the redemption of the appropriations of that act, until the close of the war. But the continuance of it, in the new supply bills, was resisted, as being in conflict with the acts of parliament authorizing the importation. During the pendency of the controversy, the subject was brought under the consideration of the attorney-general of England, (Mr. Murray, afterwards lord Mansfield,) who pronounced the opinion "That no colony had power to make such laws, because they were in direct opposition to the authority of the parliament of Great Britain; and that, if they were proper, the colonial legislatures might, with equal propriety, lay duties upon, or even prohibit, the importation of English goods." (27) The parallel given was, itself, an answer to this opinion; inasmuch as by the express grants of the charter, (which, lord Mansfield frankly admits in his opinion, he had not examined,) the legislature of Maryland had power to impose duties on imported British merchandize. (28) Yet this opinion was relied upon, with seem-

upon us, *that we are the descendants of convicts?* As far as it has lain in my way to be acquainted with the general sentiments of the people upon this subject, I solemnly declare, that the most discerning and judicious amongst them esteem it the greatest grievance imposed upon us by our mother country."

This writer also informs us, that the ordinary price of convicts, if common labourers, was about £12 sterling; and if tradesmen, from £18 to 50 sterling.

(25) Message of H. of D. of 16th Decr. 1757, and Journals of H. of D. of 14th March and 26th Feb. 1755, and note (25).

(26) 2d Chalmers's Opinions, 112; and Maryland act of 1725, chap. 6th, dissented from by the proprietary.

(27) Governor's Message in Journal of H. of D. of 7th May, 1757, and 1st Chalmers's Opinions, 347.

(28) Charter, sect. 17th, and *antea*, 163.





ing confidence, by the governor and council; and pressed, but fruitlessly, upon the lower house, to induce it to suspend the collection of that duty under the act of 1754. Some delays in its collection subsequently occurring, the governor attempted to take refuge under this opinion. (29) The reply of the lower house evinces, that "neither tall, nor wise, nor reverend heads" had much influence in reducing the Assemblies of Maryland to submission, when they were warring for their rights. It is so characteristic of the people, and the temper of the times, that we cannot withhold it. "As we have understood, (says the message,) that opinion was obtained by the persons nearly interested in the event, we are inclined to think, that it was not founded on a very fair and impartial statement of the case; and therefore, until some regular authoritative inhibition from the government of the mother country shall circumscribe the effect of our law, it will and ought to have its full operation and force. Precarious, and contemptible indeed, would the state of our laws be, if the bare opinion of any man, however distinguished in his dignity and office, yet acting, as in the present instance, in the capacity of a private lawyer or counsel, should be sufficient to shake their authority and destroy their force." (30)

(29) Journals of H. of D. 14th April, 4th and 7th May, 10th and 16th December, 1757.

(30) Journ. of H. of D. 10th April, 1758. There were several occasions in the Colonial History of Maryland, when resort was had to the Crown Lawyers for opinions, to influence the deliberations, or change the judgments of the Assemblies: but they never answered the purposes for which they were obtained. Vouched as they were by great and imposing names, and claiming to be oracular, they were regarded by the Assemblies as alike the flattering responses of the *oracles* of olden times—always adapted to the wishes of those who sought them. The reader, who has had occasion to read Mr. Chalmers's Collection of Opinions relative to the colonies, must have been struck with the unsatisfactory, nay imbecile character of many of those opinions, coming from lawyers conspicuous for their integrity, their general ability, and their professional learning. They manifest a degree of carelessness, and a want of research, in the investigation of the questions submitted, which serve to show how lightly the colonial rights and interests were regarded. It will be seen in the text, that even Mansfield, in an opinion professing to determine the extent of the legislative power of the Colonial Assemblies of Maryland, admits that he had not even examined the charter by which that power was given, and under which it was exercised. Thus it was that the rights of a people





It is therefore apparent from these details, that the course of Maryland, during the campaigns of 1754 and 1755, was not one of timid abandonment, or selfish disregard, of the general interests of the colonies. When the proper occasion for action had arrived, it was met by her with promptness and alacrity. The messages of the lower house of Assembly all breathe the spirit of men, deeply sensible of their obligations for the common defence, and ardently desirous to redeem them. Yet they were unwilling to jeopard, for the accomplishment of their wishes, the sacrifice of unquestioned rights, or to make their discharge of one duty dependent upon their wilful disregard of another. To their constituents they owed it as a sacred duty, to guard with the most apprehensive jealousy, the rights of taxation and internal regulation, as the exclusive prerogatives of their Assemblies. Upon the preservation of these prerogatives in purity and perfection, depended the essential liberties of the colony; and it is manifest, that the concessions demanded by the upper house could not have been acceded to, without a surrender of the principles to which the lower house of Assembly and the colony stood pledged, by repeated acts and resolves of the most explicit character, in relation to the exercise of the taxing power. The proprietary, at that very period, was collecting the tobacco and tonnage duties; although their collection had, for years, been denounced by the people of the province, as the exercise of arbitrary prerogative, usurping the power to tax, and that too for the private benefit of the pro-

Propriety of the course of the lower house as to these controversies.

were passed upon and rejected, without giving to them as much consideration as would have been bestowed upon a petty question of property between individuals. From the character of many of the opinions of the Crown Lawyers as to the Colonies, one would suppose that they had been given for

*half a crown.*

They were happily characterised by the distinguished Daniel Dulany, in his remarks upon the Stamp Act. "I have lived long enough," says he, "to remember many opinions of Crown Lawyers upon American affairs. They have all been strongly marked with the same character. They have generally been very sententious, and the same observation may be applied to them all—*They have all declared that to be legal, which the Minister for the time being has deemed to be expedient.* The opinion given by a General of the Law on the question, whether soldiers might be quartered on private houses in America, must be pretty generally remembered."—Dulany's Considerations.



prietary. The exclusive right, now claimed for him, of granting ordinary licenses, and of assessing and receiving for his own benefit the amount of license money to be paid upon their grant, advanced one step further in the march of prerogative. It had no fig leaf to hide its nakedness. It had neither the sanction of the charter, nor the color of law; and resting, for its justification, solely upon its previous exercise, the very claim of it upon *precedent*, did but more strongly demonstrate the necessity of resisting it at the threshold. Whilst the independence of the taxing power of the Assemblies was thus menaced, the objections to the duty on convicts struck at its very root. They denied its exercise in the very case where the propriety of it was sanctioned by the most solemn guarantees of the charter; and where also, it was merely a measure of internal regulation against an acknowledged evil. In the act of 1754 these duties had been sanctioned; and to yield them now upon such objections, was to give a vantage ground to prerogative never to be reclaimed. The Assemblies therefore acted upon the maxim, "*obsta principiis*;" and they acted wisely.

The disastrous results of the campaign of 1755, had, however, placed the colony in a condition which no longer permitted the lower house to pause for the acknowledgment of these rights.

Unprotected condition of the frontiers, at the close of the campaign of 1755.

The expedition under general Braddock, in which Maryland bore no part, had been signally defeated; and by the retirement of the British troops, the frontier settlements of Maryland were left open and entirely unprotected, against the incursions of the savages, now hanging on her borders. The terror occasioned by Braddock's defeat, was borne by the borderers to the very heart of the settlements. The westernmost settlements of that period, extended but very little beyond the mouth of *Conococheague* creek. There were indeed beyond this limit, a few of the more adventurous of the borderers, who, like Boon or Leather-Stocking, were continually plunging deeper into the wilderness to escape the advance of the settlements; but the *Conococheague* was then about the "*ultima Thule*" of civilization. There was a settlement at Fort Cumberland; but it was not then a settlement of this colony. The site of the latter place, at the junction of Will's creek and the Potomac river, had recommended it strongly to the consideration





of the Ohio Company, as an advantageous position for the establishment of a trading post; and a trading station was accordingly established there by that company, as early as 1752-53, which soon became one of its most important establishments. The place itself, appears to have been regarded by that company, as within the limits of his grant; as a town was actually laid out, under the direction of that company, upon the site of the present town of Cumberland. (31) A stoccado fort was soon erected for the protection of the post; and in the expeditions of 1754 and 1755, it became the usual place of rendezvous for the troops destined for the Ohio, and was garrisoned by forces from Virginia. But from the settlers of Maryland, this post was separated by a deep and almost trackless wilderness of eighty miles in extent, which, in times of savage hostility, cut off all communication and hopes of assistance. (32) A journey to it, at that day, would have been considered almost as perilous as a modern journey to the Rocky Mountains; and its very situation, was a subject for conjecture to the people of Maryland generally. Thus situated, this fortification afforded no protection to the frontier settlements of the colony. There were many passes by which the enemy might approach them, without coming within the range of that fort; and it was too remote to afford hopes of succour, in cases of sudden attack. Against such attacks they had no protection, except that afforded by a few small stockade forts, erected by the borderers themselves as places of retreat for their families; for at the commencement of this war, there was not a regularly garrisoned fortification in the whole province.

The emergencies of such a situation required all the energies of the colony. A general council of the colonial governors had

(31) This information is derived from Charles Fenton Mercer, Esq. who has or had in his possession, the papers of the Ohio Company, and amongst them, a draught of the plan of this town.

(32) Even as late as 1756, this fort was so far in advance of the frontier settlements both of Virginia and Maryland, that Washington, who had then the command of the Virginia forces, constantly urged upon the governor of Virginia, the propriety and necessity of abandoning it on that very account. "The governor, (says the historian) thought it improper to abandon it, since it was 'a king's fort,' and Lord Londoun, on being consulted, gave the same opinion." -2d Marshall's Life of Washington, 30.





been held at New York, in the fall of 1755, to determine upon the operations of the coming campaign. In this council, at which Sharpe, governor of Maryland, was present, a most extensive plan of operations was adopted: (33) and the governors returned to their respective colonies, to urge upon the Assemblies the measures necessary for its accomplishment. The Assembly of Maryland responded promptly to the call. Waiving, altogether, the tax on ordinary licenses, and the duty on convicts, to which its lower house had hitherto so pertinaciously adhered, as a part of the sinking fund, it now voted a supply of £40,000; of which, £11,000 were to be applied to the building of a fort and block house on the western frontiers, and keeping up a garrison therein; and £25,000 was appropriated in aid of any expedition for the general service. (34) Every exertion was now made to put the frontiers in a state of defence. The erection of an extensive and powerful fortification, called *Fort Frederick*, was instantly commenced, and so far completed before the close of that year, as to receive a garrison of two hundred men; and a company of rangers was raised, to co-operate with the garrison. (35)

(33) 1st Marshall's Life of Washington, 473.

(34) Act of February, 1756, chapter 5th.

(35) Fort Frederick is, I believe, the only monument of the ante-revolutionary times, now to be seen in the western parts of this State. Every vestige of the fortification at Cumberland has disappeared. Fort Frederick stands on an elevated and rather commanding position in the plains along the Potomac, distant about one fourth of a mile from that river, and about ten or eleven miles above the mouth of Conococheague creek. It was constructed of the most durable materials, and in the most approved manner, at an expense of upwards of £6000. When the writer saw it, in the summer of 1828, the greater part of it was still standing, and in a high state of preservation in the midst of cultivated fields. According to the description given of it at the period of its construction; its exterior lines were each 120 yards in length, (the fort being quadrangular;) its curtains and bastions were faced with a thick stone wall; and it contained barracks sufficient for the accommodation of three hundred men. Reply of Governor and Council to the commissioners of trade, of 23d August, 1756, in Conn. Pro. Liber, TR, and W S, 117 to 120.

We shall be pardoned for annexing to this note, the following message of the House of Delegates, as illustrating, by the language of contemporaries, the condition of the frontiers at that period, and the object of this fortification.



During the years 1756 and 1757, the border settlements remained in a state of jeopardy, requiring the constant vigilance of the colony; and their security was frequently disturbed by some act of

New disputes about a system of revenue, between the two houses of Assembly.

savage barbarity, from the very imagination of which, we recoil. With the campaign of 1758, this period of anxiety and peril passed away. The capture of fort

Du Quesne, during that year, by the expedition under General Forbes, annihilated the French power in that quarter, and awed into submission the surrounding savages. Internal tranquillity was again restored to Maryland; and with it re-

*“Address of the House of Delegates, December 15th, 1757.*

“Fort Cumberland, we are informed, was first begun by some gentlemen of the Ohio Company, as a storehouse of their goods designed for the Ohio Indian trade, and never was garrisoned by troops stationed there by the direction of any law of this province, but commonly by Virginia forces. That fort, we have too much reason to believe, from an extract of a letter from your excellency to the Secretary of State, laid before the lower house in September session, seventeen hundred and fifty-six, in which are the following words: “There are no works in this province that deserve the name of fortifications; just behind, and among our westernmost settlements, are some small stoccado or pallisadoed forts, built by the inhabitants for the protection of their wives and children; and besides these, there is one larger, though in my opinion not much more capable of defence, on Potowmack, about 56 miles beyond our settlements. It has been distinguished by the appellation of fort Cumberland, and is at present garrisoned by three hundred men from Virginia. It is made with stoccadoes only, and commanded almost on every side by circumjacent hills; a considerable quantity of military stores, that was left by General Braddock, still remain there, and ten of the carriage guns that his majesty was pleased to order to Virginia, two years ago, are mounted therein;” is not tenable against even a trifling force, should they come with any cannon; and therefore humbly submit it, whether it might not be a prudent measure to remove his majesty’s artillery and stores, (though indeed the provisions, we are told, are chiefly spoiled) from thence to a place of greater security.

“Though fort Cumberland may be constructed, for any thing we know, near a place proper for the stationing a garrison at, for his majesty’s service in general, yet being, as we have been informed, between eighty and ninety miles from the settlements of the westernmost inhabitants of this province, and in the truth of that information, are confirmed by your excellency’s message of the 11th of this instant, wherein you say, ‘the distance from fort Frederick to fort Cumberland, by the wagon road, is 75 miles,’ and consequently the carriage of provisions thither very expensive; we humbly conceive it cannot be reasonably desired, that the people of this province should be burthened with the great expense of garrisoning that fort, which, if it contributes immediate-





turned the dissensions between the two houses of Assembly. The perils of its past situation, had rendered the colony deeply sensible of the formidable power of the French, and of the importance of removing so dangerous a neighbor. The efforts of the English government, for the extinction of the French power in Canada, were therefore cordially approved; and the colony professed the utmost willingness to accord its quota of assistance. But new difficulties now arose, as to the mode of raising supplies, which endured until the close of the war; and the result was, that no further assistance was derived from Maryland in its

ly to the security of any of his majesty's frontier subjects, it must be those of Virginia or Pennsylvania, who do not at present contribute any thing towards the support of it, that we know of.

"We understand, the most common track of the Indians, in making their incursions into Virginia (which have been lately very frequent) is through the wild desert country lying between fort Cumberland and fort Frederick, and yet we cannot learn that the forces at fort Cumberland (though the most of these that are in our pay the summer past, have been stationed there, contrary, we humbly conceive, to the law that raised them) have very rarely, if ever, molested those savages in those their incursions; from whence we would willingly presume their passage is below the Ranges, which troops stationed at fort Cumberland, can with safety to that fort, extend themselves to; and consequently, that any security arising from those troops, even to the Virginians who are most in the way of being protected by them, must be very remote, and to us much more so.

"When, from the incursions and horrid depredations of the savage enemy in the neighboring colonies, an opinion prevailed, that a fort was necessary for the defence and security of the western frontier of this province, it was thought most likely to be conducive to those ends, to have it placed some where near the place fort Frederick is now constructed; because from thence, the troops that might be judged proper to be kept on foot for the security of the frontier inhabitants, might have it in their power to range constantly in such manner as to protect them against small parties; and in case any considerable body of the enemy should appear, or the fort should be attacked, the troops might, at a very short warning, be assisted by the inhabitants.

"Near the sum of £6000 has been expended, in purchasing the ground belonging to and constructing fort Frederick, and though we have not any exact information what sum may still be wanting to complete it, (if ever it should be thought proper to be done) yet we are afraid the sum requisite for that purpose, must be considerable; and we are apprehensive that fort is so large, that in case of attack, it cannot be defended without a number of men, larger than the province can support, purely to maintain a fortification."





prosecution. A supply bill to meet the requisitions of the crown, was passed by the lower house, in nearly the same form in which it was originally proposed, at nine several sessions of Assembly, held during this interval; and was as regularly rejected by the upper. The discussions connected with it, exhibit a high degree of irritation on both sides; and although the details of the system of taxation proposed by the lower house, may be considered, by some, as objectionable and oppressive, all must admire the courage and constancy with which that house adhered to its propositions. Believing that the principles which were put in issue by the controversy, admitted of no compromise, neither the menaces of the crown, nor the official power and influence of the province, could seduce it from its purposes. A brief notice of the prominent features of the system of taxation, thus upheld by that house, will serve not only to illustrate the character of that controversy, but also to exhibit the views of the colony as to the proper objects of taxation.

This scheme of taxation was somewhat analogous to the *general assessment system*, which has, of late years, been so frequently the subject of controversy between the two houses of our

Characteristic  
features of the  
system sustained  
by the lower  
house.

Assembly. It extended the taxing power to every species of property, real, personal, and mixed, (except household furniture, and the implements of trade and husbandry;) including all debts due in the province, whether due to inhabitants or non-residents; and all imported merchandise. Public officers, lawyers, and factors, were to be taxed upon their income. The proprietary property, in all its forms, came in for its rateable proportion of the tax. His quit-rents, his manors, his reserves, and his vacant lands, were all made liable to the tax. The most objectionable feature of the system, was that imposing a double tax upon non-jurors or papists; and the records of that period justify the inference, that it was adhered to, not so much from any conviction of its general propriety, as for the purpose of reaching particular obnoxious individuals, who were high in the confidence of the proprietary. The tax on the proprietary quit-rents and reserves, on imported merchandise, and on debts due to non-residents; and the double tax on non-jurors, were the principal themes of the censure lavished upon this system by the upper house; but it is probable,



their objections lay deeper. The council to the governor, consisted generally of persons holding lucrative offices, or possessed of that species of wealth which had hitherto been exempt from taxation; and they had wit enough, whilst they felt for themselves, to complain for others. The mode of assessment and collection of the taxes proposed to be raised by this system, was as objectionable to the upper house, as the system itself; and here the latter were less scrupulous, in revealing their objections. It assumed for the lower house a prerogative as to money-bills, which the upper had never been willing to concede. For many years, the former had claimed the exclusive right of originating money bills, and of appointing and supervising the officers entrusted with the expenditure of the public money. Acting under this claim, in the supply bills of this period, they named the commissioners who were to carry them into effect, and reserved to themselves the exclusive right of auditing their claims and accounts; whilst they cast the onerous duties in the collection of the taxes, upon the proprietary's private agents, and the receivers of his quit-rents, who were required to perform them for a small allowance. The privileges here assumed, the upper house had always refused to concede upon any terms; and if all the other objections to the system could have been obviated, here alone was a source of invincible disagreement.

During the progress of this controversy, the proprietary called in to his aid the opinion of the Attorney General, Pratt; (afterwards Lord Camden.) Upon most of the subjects in controversy, the objections of the upper house were sustained by that opinion. The tax on non-residents and imports, was pronounced by it to be clearly improper, and one which the mother country would never endure: and to be extremely unreasonable, in requiring the English importer of goods into Maryland, to pay a tax for the mere right of trading to the province, to which he was entitled beyond the control of the provincial Assembly. It was objected to it also, that if the Assembly could tax the merchandise imported, they might, by the same rule, prohibit its importation. Had Lord Camden ever read the charter of Maryland, before giving this opinion: or did he doubt the efficacy of the charter power to impose duties on

Opinion of Lord  
Camden upon  
this system.





imports and exports? (36) He has not noticed the latter: and in another part of his opinion, he recommends a reference to the charters, for the proper limits of colonial power. The crown lawyers of England never gave opinions to impair the commercial monopoly of England, or to diminish the utter dependance of the colonies. The tax on non-jurors, he denounced as violating the public faith, and subverting the very foundation of the Maryland constitution, and as not to be excused by any thing but a well grounded jealousy of dangerous practices and disaffection on the part of the Papists; and the tax on vacant lands, as one which ought to be resisted by the proprietary, because it was principally levelled at his estate. In regard to the nomination of the officers, he maintained, that the right of appointing these officers did not necessarily fall to the proprietary, under his general charter power of appointing the officers of the province: but that the office being created by law, the law might provide another mode of appointment. He held, however, that the upper house acted rightly, both in claiming a voice in the appointment of these officers, and a co-ordinate right in the supervision and adjustment of their accounts; and concluded his opinion by the following remarkable admonition: "The upper house should take care how they admit encroachments of this kind, when they are supported by arguments, drawn from the exercise of the like rights in the House of Commons here. The constitutions of the two Assemblies differ, fundamentally, in many respects. Our House of Commons stands upon its own laws; whereas Assemblies in the colonies, are regulated by their respective charters, usages, and the common law of England, and will never be allowed to assume those which the House of Commons are justly entitled to here, upon principles that neither can nor must be applied to the colonies." (37) This opinion is here summarily presented, not only as a part of the history of this controversy, tending to elucidate the principles involved in it, but also as displaying the then immature notions of this distinguished person, as to the nature and extent of colo-

(36) *Supra*, 163.

(37) See this opinion at large in 1st *Chalmer's Opinions*, 262, and the *Journals of House of Delegates* of 23d March, 1760.





nial rights. Lord Camden was a pure and enlightened statesman, whose name has come down to us in history, identified with the advocacy of American liberties. He was one of their first, firmest, and most honored champions. So was the peerless even amongst peers, the illustrious Chatham. Yet at this period, Mr. Pitt is found cherishing the scheme of compelling the colonies to tax themselves according to the requisitions of the crown, as consistent with colonial liberty; and Lord Camden earnestly remonstrates against the assumption of the money powers of the House of Commons, by the House of Delegates of Maryland, as inconsistent with the being and nature of the latter, and not to be tolerated. The true nature of colonial dependance was not yet understood. The character and extent of colonial rights had not yet been thoroughly investigated. The objects and efficacy of colonial institutions were not yet appreciated. It required the coming collisions with the mother country, to strike these out. In the general estimation, the rights of the colonies were yet wrapped in the swaddling-clothes of their infancy: and the interests of a free, widely extended, and powerful people, were to be measured by the standard adapted to a puny settlement.

The House of Delegates of Maryland, alike the House of Commons, was the only direct representation of the people. The upper house was not only independent of the people, as are the peers; but what was still more objectionable, they were the mere creatures of the proprietary, "the breath of his nostrils." The principle, "that the people could be taxed only by their assent," had long been as sacred under the constitution and laws of Maryland, as under those of England. The power of the House of Commons as to money bills, is claimed as the incident of this principle, and its own organization: and "*The law of Parliament*," which justifies it, is nothing more than assumed prerogative for the guard of the principle. The analogy was perfect: and the consequence could not but follow. So thought the House of Delegates; and the opinion fell powerless. It was not usual for that body to rely upon the opinion of others for a knowledge of its own rights, or to bow down before the authority of great names. "We observe, (says



it, in reply to the message of the governor, submitting the opinion of the attorney general) your excellency's particular and pathetic admonition to us, to avoid the rock on which we have heretofore split; and as you have thought proper to give us the opinion of his majesty's attorney general, (though given, we presume, only as private counsellor to the lord proprietary,) relative to the two supply bills; being desirous to pay to it all due regard, we cannot but wish, that opinion had been accompanied with the state of the facts on which it was founded, especially as we are not at present convinced, that the upper house could not have assented to those bills, without a breach of their duty, and a violation of the constitution." (38)

Peace was at length restored to the colonies, in 1763, by the treaty of Paris; and these dissensions ceased to agitate the province. By this treaty, the French power in Canada was Treaty of Paris. extinguished, and the Mississippi became the acknowledged boundary of the British possessions. The effects of that treaty upon the civil and political condition of the colonies, belong to the history of the more momentous controversy, in which they were soon to be involved. From this period, the colonies had no enemy but the parent country; and the history of this province records only her glorious transition from dependence to independence.

The *Governors* of Maryland, during this period, were John Hart, Charles Calvert, Benedict Leonard Calvert, Samuel Ogle, Thomas Bladen, and Horatio Sharpe. (39) To portray individual

(38) Journal of House of Delegates, March session, 1760,

(39) John Hart, who was commissioned governor by the proprietary, immediately after the restoration, was succeeded in June, 1720, by Charles Calvert, who remained governor until March, 1726-27, when he was superseded by Benedict Leonard Calvert, the brother of the proprietary. Ill health compelling the latter to return to England, he was succeeded in the office of governor by Samuel Ogle, in September, 1731, who continued to govern the province until the arrival of the proprietary himself, in 1732. The proprietary having visited the province with a view to the controversy then pending between himself and the Penns, administered the government in person, until June, 1733, when upon his return to England, Mr. Ogle was re-commissioned, and acted as governor until August, 1742, when he was succeeded by Thomas Bladen, the brother-in-law of the proprietary. Mr. Ogle was again appointed governor in 1746-47; and acted as such until 1652, when by his return to





Governors.

character, is not the purpose of this work; except where individual acts and motives are involved in the transactions of the colony, and are necessary to illustrate their true character. The period of which we are treating, is so far removed from us in time and character, that not only the actors and their motives, but even the transactions and the results which belong to it, have in a great degree ceased to interest. When events are forgotten, the individuals connected with them cannot hope to be remembered. We have no knowledge of any memorials of that day, but the Assembly and council transactions; and even tradition is mute. The general condition of the province was one of tranquillity and prosperity; and the occasional differences between some of these governors and the Assemblies, do not furnish decisive indications of the character of the former. Their private virtues, and their faults, have alike passed away with the age in which they lived; and their memory is in a name. Yet Cæsar has no more!

The population of the colony increased rapidly during this era. In 1733, the number of taxable inhabitants was 31,470. (40) In 1748, the number of inhabitants was 130,000, including 94,000 whites and 36,000 blacks; in 1756, it had

Population.

increased to 154,188, including 107,963 whites, and 46,225 blacks; and in 1761, it amounted to 161,007, including 114,332 whites, and 49,675 blacks. (41) The inducements held out to emigrants were much greater than during the period of the royal government. The restoration of the proprietary, identified his private rights with the public policy; and these rights being no longer embarrassed by the Assemblies or the agents of

England, the government devolved upon Benjamin Tasker, then president of the council, who continued to administer it until the arrival of Horatio Sharpe, the new governor, in March, 1753. Mr. Sharpe remained in the government until August, 1763, when he was superseded by Robert Eden, the last governor under the proprietary dominion.

(40) The *taxables*, at this period, were designated by the acts of 1715, chap. 15th; and 1725, chap. 4th. They included all *males* above the age of 16, except beneficed clergymen and paupers; and all female negroes or mulattoes. Council Proceedings of 1733, Liber M, 92 to 94.

(41) Reports of the governor and council of Maryland, to the commissioners of trade, in 1749, 1756, and 1761. Coun. Pro. of 13th December, 1749; of 23d August, 1756, Lib. TR and WS, 117; of 1761, in Lib. TR and WS, 318.





the crown, as during the royal government, the lands of the province were always open to grant upon favorable terms. The character and stability of the government, the value of the staple commodities of the colony, and the fertility of the ungranted lands, all concurred to invite the industrious and enterprising emigrant. But besides the voluntary immigration during this period, there was another fruitful source of population, the influx of which, although at the time deeply deplored by the inhabitants, contributed largely to the increase and strength of the colony. The number of convicts imported into Maryland during this era, must have amounted, upon the lowest estimate, to fifteen or twenty thousand. They were imported by private shippers, under a contract with the crown; and sold into servitude in the colony, for their term of transportation. The want of labor is always sensibly felt in a new country, and particularly in those operations which are necessary to prepare it for culture; and in the representations of former periods, it is frequently alluded to, as one of the principal difficulties encountered by the colonists. The number of convicts now thrown into the province, removed this inconvenience; and although the servants thus obtained, brought with them the brand of infamy, as the voucher for their morals, they were generally inured to labor, and endowed with bodily energies, equal to the severe task of opening and cultivating a new country. They soon became amalgamated with the ordinary population; and when their term of servitude had expired, many of them became highly useful and reputable citizens, and some rose even to the most honorable distinctions. The pride of this age revolts at the idea of going back to such as these, for the roots of a genealogical tree; and they, whose delight it would be, to trace their blood through many generations of stupid, sluggish, imbecile ancestors, with no claim to merit but the name they carry down, will even submit to be called "*novi homines*," if a convict stand in the line of ancestry. Yet certain it is, that whilst this class of population supplied the colony with the labor which it most wanted, it included many, who lived to emerge from the degradation of their servitude, to atone for their early follies and vices, to win for themselves again a fair and honorable name, and even to transmit honor to a virtuous offspring. Like the "*Clifford*" of romance, they lived to



prove, that even the spirit, early and long educated in the ways of vice, is not incurable; and that virtue's paths, though late regained, may yet be paths of pleasantness and peace. Supercilious morality may condemn the exhibition of such characters; but we shall be pardoned for saying, upon the experience of the colonies generally, that men thus rescued from crime, and enrolled as citizens, did contribute to the strength and moral power of the province.

The commercial condition of the colony during this period, exhibited all the features of abject dependence. The restrictive system, had accomplished all its purposes, and had fully established for England the monopoly she desired. The trade of the province in every valuable import or export, was conducted exclusively with England, and in English vessels. Tobacco was still the principal export of the colony, and the chief source of its wealth. In most of the statistical accounts of that period, the quantity of tobacco annually exported from Maryland and Virginia, is stated in the aggregate, so as to render it difficult to determine the exact quantity exported from each. In 1731, the annual export of this article from the two colonies to Great Britain, was estimated at 60,000 hogsheads of 600 pounds each. (42) A later, and perhaps a more accurate estimate, in 1740, predicated upon the information of the English merchants engaged in this trade, rates it at 30,000 hogsheads of about 900 pounds. (43) The only estimate made in the province as to this article of export, which can be relied upon as accurate, is that contained in the report made by its governor and council, in 1761, to the commissioners of trade, which represents, that there were about 28,000 hogsheads shipped annually, from Maryland to England, valued at £140,000. It appears also from this report, and the antecedent reports of 1749 and 1756, coming from the same source and under similar calls, that the trade in tobacco was carried on exclusively with Great Britain and in English vessels. The other *exports* of Maryland, during this period, were wheat, lumber, corn, flour, pig and bar iron in small quantities, skins, and furs: but these were inconsiderable in

(42) 3d Anderson's Commerce, 423.

(43) Same, 496 and 544.





amount and value. The total value of her exports, exclusive of tobacco, was estimated, in 1749, at £16,000 sterling; and in 1761, £80,000 currency. Her *imports* were drawn almost exclusively from England; upon which she still depended, for nearly every thing but the food necessary for sustenance. The value of her English imports, was estimated, in 1756, at £150,000 annually; and in 1761, at £160,000. Besides these, she imported salt from the Portuguese Islands; and a small quantity of wine from Madeira. She carried on also a small trade with the New England colonies in bread stuffs. The state of her *shipping*, during this period, manifests the same degree of commercial dependence. The trade with England was carried on exclusively in English vessels; and according to the estimates of the colony, employed, in 1748, 200 vessels of 12,000 tons burthen; in 1756, 180 vessels of 10,000 tons; and in 1761, 120 vessels of 18,000 tons. The whole shipping of the colony, as estimated in 1756, was but 60 vessels of about 2000 tons burthen in the aggregate, navigated by about 450 men; and in 1761, in consequence of the French war, it had decreased to 30 vessels, of 1300 tons burthen in the aggregate, employing 200 men; and in its employment, it was in a great measure limited to the West India trade, and that with the northern colonies. (44)

In *manufactures*, the colony had made but little progress, except in the production of *Iron*. As early as 1749, <sup>its manufactures.</sup> there were eight furnaces and nine forges, employed in this branch of manufacture: and they were still in existence and operation at the close of this era. The quantity of iron annually manufactured in them, as estimated in 1761, was 2500 tons of pig iron, and 600 tons of bar iron. For almost every other article of manufacture, the colonists depended entirely upon England. This was the condition in which the English government desired to retain them: and the reports from the province to the commissioners of trade during this period, betray, every where, the knowledge of the jealousy with which the former regarded all attempts to establish manufactories in

(44) These facts relative to the statistical condition of Maryland at this period, are collected from the several reports of her governor and council, to the commissioners of trade in 1749, 1756, and 1761, referred to in note 43 of this chapter.





the colonies, and the desire to allay it. Hence all these reports concur in saying, that no such attempts had been made or were about to be made in the province, except for the production of iron. Their representations as to manufactures, might therefore be received with some degree of distrust, as coming from persons anxious to conceal what they had accomplished in the establishment of them; if they were not sustained by the statements of the Assembly at a later period, when fresh from the victory over the Stamp Act, and in a message representing the necessity of manufacturing for themselves—"We can only say (says the lower house, in 1767) what is very generally known, that nothing has been set up in this province which deserves the name of a manufactory. It is true, that several families make some of their coarse cloathing within themselves, but in so few instances as not to deserve notice, and that without any encouragement from public or private subscriptions, except the small bounty lately paid by the County Courts upon a few pieces of linen. Your Excellency may well report, from your own sight and knowledge, that the inhabitants of the province, from the first to the lowest rank, are generally clothed in British manufactures." (45)

Such was Maryland when began the struggle for her political liberties, originating with the Stamp Act, and terminating in her independence. From the proprietary restoration, her progress had been rapid, when contrasted with that of the preceding era. A population of little more than thirty thousand persons had been swelled to one of more than one hundred and sixty thousand. Adventurous industry had carried that population to every quarter of the province, and with it the arts of civilized life. The colony was no longer a feeble settlement on the outskirts of the wilderness. It was now the undisputed master of the province, and the occupier of the greater portion of its soil; and there were none to make it afraid. The savage power within its limits was extinct, and the enemy was removed from its borders. Industry, frugality, and simplicity were the severe virtues of the colonists; and contentment and prosperity marked their condition. Enthralled as was their commerce, and dependent as they were upon the mother country for many of the sup-

(45) Journal of House of Delegates of 6th December, 1766.



plies of life, they had now internal resources upon which they could rely in cases of emergency, and the power and energy to apply them when occasion might require. Their connexion with the parent country, with all its restraints, had hitherto been one of harmony, because one of mutual benefit: and in all that related to their liberties, it left them freemen, dwelling under free institutions. Submission to tyranny they had never known; and the right of self government, they had always claimed and enjoyed as their birth-right. That right was now to be assailed: and the history of their struggle for its preservation will show how justly they appreciated it, how well they deserved to enjoy it.





## CHAPTER V.

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### HISTORY OF MARYLAND FROM THE PASSAGE TO THE REPEAL OF THE STAMP ACT.

THE acquisitions of the treaty of Paris, gave to the colonial possessions of the English government in North America, an extent and security hitherto unknown in their history. The rival power of France, which had so long struggled for the mastery on this continent, was now removed from their borders. Its savage allies, who, under its incitements, had so long menaced, and had so often carried their ferocious and desolating warfare into the colonies, were now humbled and intimidated. There was no longer the struggle for ascendancy between two formidable powers, to lure them into the unceasing contests which it excited, to stimulate their ferocity by the rewards which it proffered, and to sustain them even in the moment of defeat by the hope of protection. The events of the recent war, had at once removed the principal provocatives to their incursions, and had taught them to respect and dread the power they were now singly to encounter. The border defences, which had been erected to meet the necessities of the moment, were more efficient than they had hitherto been; and the long endurance of the war, had acquainted the colonists with their own resources, and had familiarized them to all the expedients of self protection. Whilst thus every thing concurred to promise uninterrupted peace and prosperity to the colonies, the power of the English government over them, seemed to be established on the most durable foundations. There never was a period, at which the English crown appeared to have a firmer hold upon its colonies. Planted principally by Englishmen, the inhabitants of the latter still looked with veneration upon the mother country, as the home of their forefathers, and





the land whence they had drawn their free principles and institutions. The full possession of English liberties had ever been their highest pride and boast; and the constant appeal to them, and vindication of them against arbitrary power, had naturally made the enjoyment of these liberties their first and highest aim. The state of commercial dependance upon England, to which they were subject, had long been familiar to them; and it was, at this period, one of the very causes which contributed to secure their attachment, and rivet upon them their colonial condition. Aided by other causes, it tended to restrict the intercourse of the colonies, social as well as commercial, to each other and the parent country. The golden ties of commerce, often more difficult to be severed than those of blood, linked them together in a connexion, which is generally one of harmony, because it is one of mutual benefits; and the social intercourse which it promoted, threw over this connexion of interest, the bonds of affection. With foreign nations, their correspondence was very limited; and there existed few causes to increase it, or to create the wish for its enlargement. In their colonial history generally, they had known the subjects of foreign nations, principally, as the enemies of their nation, the depredators upon their commerce, and the allies of their savage foes. Thus did interest, affection, and pride, all conspire to sustain the dominion of England over her American colonies. The results of the late war, signalized as it had been by the complete triumph of the British arms, gave fresh vigor to these causes. To England, it was a struggle for power; to the colonists, a contest for the security of their homes and their families. Yet, however different their views and interests, they had a common foe; they had warred side by side against that foe; and their united efforts had accomplished for both the victory they desired. Mutual gratitude always marks the first moments of such a triumph; and often, of itself, lays the foundations of an enduring attachment. England felt and acknowledged her gratitude to the colonies, for their prompt and efficient assistance; and the latter remembered her, at that moment, only as the parent who came to preserve and protect. In the midst of general rejoicing, her colonial subjects were willing to forget all the misrule and oppression of the past; and it now required only a kind and generous policy



for the future, to have established her dominion, beyond the probability of overthrow, perhaps for ages. The wise, and, to us, the fortunate dispensations of Providence, ordered it otherwise.

However parental her conduct might have seemed to the colonists, the mere internal happiness and security of the colonies

The preservation of the French power in Canada favorable to the liberties of the colonies. were a secondary consideration with the English government. With her, in the prosecution of the war which had just terminated, her own aggrandizement, and the prostration of a hated foe, between

whom and her there subsisted a rivalry and enmity of centuries, were the primary objects. The establishment of that foe on the borders of her colonies, was also the most serious obstacle to her designs against the liberties of the latter. It occasioned, for nearly a century, public distresses, and individual calamities, at the very recital of which we shudder. Yet, if we look more narrowly into its consequences, we shall probably discover, that it contributed largely to suspend the designs of the English crown and parliament against the colonies, until they were adequate to their own protection. Its continued encroachments required constant vigilance and resistance. For the means necessary to counteract these, the English government was obliged to rely mainly upon the patriotism and energy of her colonies; and these, by gentleness, she might win to her aid, but could not compel by tyranny. However licentious she might deem the liberties, which had grown up in them unnoticed, she was obliged to respect them in the moment of emergency. Any deliberate attempt to crush them, would not only have paralysed the energies which she needed; but might have thrown her possessions, once filled with disaffection, as willing or submissive victims, into the arms of her rival.

In the reigns of the first James and Charles, the prerogatives of the crown, as exercised over the English colonies, respected no limits but those of its own discretion; but these colonies were

Degree of colonial dependence, before the Protestant revolution. then too inconsiderable, to excite its jealousy or attract its oppressions. The civil wars gave them time to expand and mature; and the restoration of

Charles II., found them firmly established, and with a commerce sufficiently developed, to tempt by the probable benefits of its exclusive enjoyment. It was now a fit subject for





monopoly; and aided by the Parliament of England, this monarch succeeded in establishing a system of restrictions upon the commerce of the colonies, which made them feel, to use their own expressive language, "that they were but hewers of wood and drawers of water unto England." It was not enough to monopolise it. The next step was to impose duties upon it, as pretended auxiliaries to its regulations. The history and objects of these acts, and the reception with which they met in the colonies, have already been described. The colonies were yet too feeble for effectual resistance; and in spite of all their discontents, their evasions of the system, and their refusals or delays in carrying it into effect, it was ultimately rivetted upon them. One step further, and their bondage was perfect. It was now only necessary to establish the power of the crown, or of the English parliament, to levy taxes upon them without their consent, for the mere purpose of raising a revenue; and all the securities of their charters were at an end. Their colonial governments might have retained their ancient forms; and have carried with them all their accustomed powers of internal administration; but once confessedly subject to the supremacy of another government, that knew no limits but its own arbitrary pleasure, which acted under no responsibilities to the people it controlled, and which felt none of the burdens it imposed, where would have been their efficacy? Stripped of the very first object of government, the power of self protection, they would have dwindled into petty municipalities; and their subjects would have been freemen, by the grace and permission of England.

Now was the period to have asserted and established this supremacy. The resistance to it, in the colonies, would most probably have been as ineffectual, as that elicited by the trade

The further extension of it, suspended until the Revolution, by the coalition of the mother country.

acts. Once established and familiarised to them by its exercise, each day would have diminished the power and the will to resist; and the nineteenth century might have found us, the *Helots* of England.

How different the spectacle of a free and happy republic already, mature in every thing that gives power and renown to nations, or prosperity and contentment to a people; and already diffusing its moral influences over the world. The children of Israel, in the chosen land, looked back upon the bondage of





Egypt, and the dangers of the wilderness ; and bowed in gratitude to the Providence which had conducted them in safety through all. So may these United States of America, to their sojourn amidst the difficulties and thralldom of colonial existence. If they see not the cloud by day, and the pillar of fire by night, they may behold every where, in their colonial history, the manifestations of an overshadowing Providence, for their guidance to independence. No where is it more conspicuous, than in the seemingly untoward events, which indirectly suspended the full assertion of English supremacy, until the minds and resources of the colonists were matured for effectual resistance. The commercial regulations, introduced and established in the reign of Charles II., were but the advance guard of this supremacy. The difficulties encountered by that monarch, in carrying these into full effect, combined with the internal dissensions, which agitated England during the latter part of his reign, to engross his whole attention. His weak, yet arbitrary successor, ascended the throne, with views as hostile to the liberties of the colonies ; but without the sagacity of his predecessor, in the choice of means for their accomplishment. Charles effected his purposes under cover of Parliament ; and his system was that of *sapping*. James preferred the open assault ; and that to be carried on by prerogative alone. His open and avowed efforts for the destruction of all the chartered governments, and the means by which they were frustrated, are familiar events in our history. Fortunately for the colonies, they were identified with attempts as hostile to the religion and liberties of England ; and instead of reaching their purposes, they lost him his crown.

The reign of William, was ushered in by circumstances peculiarly propitious to the colonies. In the struggle which eventuated in seating him on the throne of England, they had, in almost every instance, gone in advance of the mother country. They spared him all the difficulties and responsibility of their subjugation to his dominion. Without waiting for the *fiat* of the crown, they had taken their governments into their own hands, and nothing was left for William, but to receive the spontaneous offers of their loyalty and submission, rendered doubly grateful by the unanimity and affection which characterised them. Policy

Circumstances in the after-condition of the colonies, conspiring to protect colonial liberties.



came in, to strengthen these claims upon his gratitude; and to recommend to him, an administration of the colonies, protective of their rights and liberties, as the best mode of perpetuating his own dominion. If more were wanting, it was found in the now formidable establishments of the French in Canada, and in the necessity of summoning all the colonial energies, to resist their encroachments. From this period, until 1763, England was engaged in an almost uninterrupted struggle for her possessions; and she found it necessary, to accommodate her course towards the colonies, to the exigencies of her condition. In the various wars which occurred during that interval, she had but one mode of raising men and money from the colonies, for their prosecution. The crown commanded the assistance of the colonies, in the prosecution of its plans against the common enemy; and in general, prescribed the quota of men or money to be furnished by each; but here its power stopped. It remained for the colonies to grant this assistance through their Assemblies; who alone determined the manner, in which it should be levied. To them, the requisitions of the crown were about as imperative, as the recommendation of the old confederated government to the states. They were regarded as requests, and not implicitly obeyed as commands. The colonial Assemblies concurred in them, at the time, and in the manner most agreeable to themselves; and the consequence was, that very frequently they were not obeyed at all. The history of Maryland furnishes several instances of such a result, to which we have already adverted; and which serve, fully to illustrate the general character of English supremacy, as exercised over the colonies during this period. The plans of the English government were often frustrated, by the tardiness or refusal of the colonial Assemblies to concur in its requisitions; yet neither the crown, nor the Parliament, were willing, even in the full view of these inconveniences, to venture upon the dangerous expedient of substituting their own taxation.

Yet the history of their transactions abundantly shows, that they longed for the establishment of a supremacy over the colonies, which would enable them to direct their operations at





Entire supremacy, the constant aim of the English government.

pleasure. The propositions made in Parliament in 1701 and 1714, to destroy the charter and proprietary governments; and the plan of colonial union proposed by the English government, in 1753, which we have already described, all aimed at the same object. Whatever the ostensible reason accompanying them, whether professedly projected for the better regulation of the trade, or the more efficient defence, of the colonies; at bottom, they were but so many designs to put them in the uncontrolled power of England. A more dangerous expedient than all, was that of the bill introduced into Parliament, in 1748, proposing to give the king's instructions the force of law, and to make them imperative upon the colonies. To the vigilant and unyielding resistance of the latter, and the power which their peculiar situation gave them over the English government, may we ascribe the defeat of all these propositions, and not to her tenderness or justice. What her tenderness and justice were, when she believed herself to be no longer under the control of circumstances, the events following the peace of 1763, strikingly illustrate. "There were not wanting some (says Mr. Pitt, in his celebrated speech upon the repeal of the stamp act,) when I had the honor to serve his majesty, to propose to me to burn my fingers with an American stamp act. With the enemy at their back, with our bayonets at their breast, in the day of their distress, perhaps the Americans would have submitted to the imposition; but it would have been taking a very ungenerous and unjust advantage of them." Mr. Pitt was mistaken, both in the probable result, and in the reasons which stayed the attempt. It was the danger of the attempt, and not the injustice of it. His predecessor, Mr. Walpole, who maintained that every thing had its price, made the liberties of the colonies an exception; and contenting himself with the benefits of their commerce, he sagaciously remarked, that he would leave the taxation of the Americans to some of his successors, who had more courage, and less regard for commerce.

The peace of 1763, removed this obstacle, and every probability of its recurrence. The colonial possessions of England were now deemed secure from all foreign aggressions; and the transactions, which gave them se-

Effect of the late war upon this design.





curity, entitled her colonies to her highest gratitude. Now came the time to display her tenderness; and the earliest exhibition of it, was the kind resolve of her parliament, to take the taxation of the colonies into its own hand. The conjuncture was deemed most favorable for the purpose. Foreign interruption being removed, it would be but a single-handed contest between her and her colonies; in which, the latter, beset by internal difficulties and dissensions, could not long withstand her unbroken force. Such resistance, however, was not even contemplated by her ministry. Murmurs and disaffection might rise high; but the appeal to arms, they deemed a chimera. In estimating the power and resources of England, they overlooked those of the colonies. The struggles of half a century, had revealed to the latter their own powers and resources, and had familiarized them to self dependance. The privations and calamities incident to these struggles, had nurtured the free and adventurous spirit of their people, and had trained them to habits of industry and frugality, the best promoters of public virtue and liberty. The right of internal taxation, which they exclusively claimed, was sustained and consecrated by its long enjoyment; and their past triumphs in its defence, were but so many incentives to its future protection.

There was no colony of English America, in which the claim of the inhabitants, to exemption from all taxation not sanctioned

Sentiments of  
the people of  
Maryland as to  
the right of tax-  
ation.

by their assent, was more familiar than in Maryland. It was one of the fundamental principles of their proprietary government, incorporated with it by law in its very infancy; (1) and it was constantly extended by its Assembly, even to every act of the proprietary administration, the indirect consequence of which was taxation. The vigilance with which its Assemblies guarded this right, and their constant assertion of it against every thing which even indirectly tended to its infringement, gave to it the character of an indisputable privilege. The terms of their charter, to which we have already adverted, in declaring them entitled to all the liberties of English subjects, and exempting their persons and property, *by express covenant of the crown*, from all taxations or impositions of any

(1) Act of 1650, chap. 25; and *supra*, 160.



description under its authority, were held by them to be effectual bars to the taxation of England. (2) The encroachments upon this exemption, by the trade acts, were very reluctantly submitted to; and their acquiescence in them, was owing to the circumstances of the times, and not to their relinquishment of the exemption. Still these were not purely and properly acts of taxation. They had, at least, for their cover, the regulation of commerce; and they were not pressed to such an extent, as to indicate, that their sole object was *revenue*. The sentiments of the people of Maryland, at that very period, are fully exposed, in a letter written by Mr. Nicholson, then governor of Maryland, in August, 1698, to the Council of Trade in England. "I have observed, (says he,) that a great many people, in all these provinces and colonies, especially in those under proprietaries; and the two others, under Connecticut and Rhode Island, think that no law of England ought to be in force and binding upon them without their consent; for they foolishly say, they have no representatives sent from themselves to the parliament of England; and they look upon all laws made in England, that put any restraint upon them, as great hardships." (3) During the continuance of the royal government their old institutions were still preserved; and the levies, which the crown asked, were still obtained through their Assemblies only. The restoration of the proprietary removed them further from the operations of the crown; and the experience of every year, made their claim to exemption more familiar and unquestionable. The very exercise of powers adverse to it, was so antiquated as to have become a novelty. (4)

(2) *Supra*, 163.

(3) Chalmers, 442, note 56.

(4) It may be true, as is remarked by Judge Marshall, "that the degree of authority, which might be rightfully exercised by the mother country over her colonies, had not been accurately defined before the passage of the stamp act." It may also be true, that the power of parliament had been previously exercised over them, by statutes, introducing regulations of a purely *internal* character; and that the distinction, denying to parliament the powers of internal regulation, was not sustained by precedent. Yet it is most certain, that the right now claimed for it, *of imposing an internal tax upon the colonies for the mere purpose of revenue*, was entirely novel and unprecedented. Mr. Burke has presented the proper character of the previous exercises of the parliamentary power, relied upon as analogous to that attempted by





The experiment of parliamentary taxation, which the English government were now about to make, had the usual *fig-leaf* of arbitrary power, to conceal its harshness. The expenditures of the late war had added largely to the already overgrown national debt. That war had been prosecuted for the protection of the colonies, and had terminated in great advantage to them. They were populous, prosperous, and wealthy, and could well afford to sustain a portion of the public burdens imposed for their benefit. To hold them exempt from

the stamp act. After passing in review, the tenor and objects of the various statutes relative to the commerce of the colonies, he justly remarks : " This is certainly true, that no act avowedly for the purpose of revenue, and with the ordinary title and recital taken together, is found in the statute book, until the year 1764. All before this period stood on commercial regulation and restraint. The scheme of a colony revenue by the British authority appeared, therefore, to the Americans in the light of a great innovation." *Speech on American taxation, 1st Burke's Works, 454.* The argument from precedent, is also very happily answered by Mr. Dulany, in his celebrated pamphlet against the stamp act, in which he clearly demonstrates, that the statutes relative to the commerce of the colonies, the statute 9th Anne, establishing a general post office ; the statute 5th, George 2d, making lands liable for the payment of debts; and the mutiny act, during the French war, all rested upon, and were justified by considerations very different from those, by which the stamp act was sustained. *Dulany's Considerations, &c. 34 to 40.*

Exemption from the taxation of England, for the mere purpose of revenue and not sanctioned by their assent, was therefore a familiar principle in the colonies. It had not as yet been directly violated; and it would therefore seem an idle task, to wade through the colonial records, for explicit denials of a right which had not yet been claimed and exercised. The respective colonial legislatures, were not only the depositaries of the taxing power, under the colonial governments generally, but also the instruments, by which alone, the mother government had ever directly obtained colonial revenue for any of its purposes. The crown had always appealed to them, for the grant of such revenue ; and although its requisitions were frequently disregarded, it had never ventured upon another mode, but continued to weary the refractory Assemblies with its remonstrances and commands. However they might have differed about the obligations of the Assemblies, to obey implicitly the requisitions of the crown, yet the course, both of the crown and of the Assemblies, seems to have proceeded always upon the notion, that the right of internal taxation resided exclusively with the latter. At least, it planted the conviction of this right in the breasts of the colonists ; and left them without the apprehension, that it was to be attacked. Being thus a constantly exer-





taxation, was to impair the sovereignty of England, by placing it at the mercy of her colonies. Such was the general tenor of the arguments which paved the way to the design; and they carried with them appeals to the pride and interest of the English nation, admirably calculated to enlist its concurrence.

The mode of making the experiment adopted by the ministry, manifested much sagacity. The associations, which the very

closed and acknowledged power, we would not expect frequent explicit avowals of it to demonstrate its existence, nor rely upon these as the first indications of the belief of its existence. Yet Judge Marshall has referred to acts of the legislature of Massachusetts and New York, passed between 1622 and 1700, as if they were novel assertions of this exclusive right. 2d Marshall's *Life of Washington*, 71. And Mr. Burke, in his *History of Virginia*, produces some much earlier recognitions of it in that colony, as if to give the latter precedence in this generous rivalry. The fact is, however, that the colonists generally, had brought the idea of the right with them, as a consecrated principle of English liberty; had incorporated it with their institutions; and had generally enjoyed it without interruption from the crown; and these very avowals of it, instead of being discoveries of political truths, were merely assertions of what were deemed established principles. Hence, in one of the very instances cited by Mr. Burke, which is contained in the representations of the agents of Virginia to the crown, in 1676, whilst the agents assert the right of that colony to be exempt from taxation not sanctioned by their assent, they rely upon it as a then generally acknowledged colonial right. "They state, that neither his majesty, nor any of his ancestors or predecessors, have ever offered to impose any tax upon this plantation, without the consent of his subjects there; nor upon any other plantation, however so much less deserving, or considerable to his crown. New England, Maryland, Barbadoes, &c. are not taxed, but by their own consent." 3d Burke's *Virginia*, 283.

There is then but little room for rivalry, in contending for the honor of originating or sustaining this principle; but if there were, there is no colony to which Maryland would yield the palm. The taxation of the crown was excluded, both by the express words of her charter, and the uninterrupted practice of the colony, from the very period of colonization. The taxing power, as granted by the charter, could be exercised "only by the advice and assent of the freemen, or a majority of them;" and that every possible security might be thrown around this right, it was expressly declared by the law of the province, in 1650, "That no subsidies, aids, customs, taxes, or impositions, shall be laid, assessed, levied, or imposed, upon the freemen of the province, or their merchandise, goods, or chattels, without the consent of the freemen, their deputies, or a majority of them, first had and declared in a General Assembly of the province."



Policy in the  
manner of its  
imposition.

mention of the stamp tax at this day brings to our minds, have rendered its name as odious as that of the excise. Yet it derives this, its odious character, not from the manner of its operation, but from the oppressive designs which it covered. It is identified, in our history, with the first deliberate effort of the English parliament to prostrate the colonial liberties; and it is detested, as the first weapon of its tyranny. Yet the tax itself operated indirectly; and was stripped of all that machinery of collection, which oppresses more than the tax itself. It was a well gilded pill; but the colonists, struggling against the principle, were not to be conciliated by the mode. It was proposed, too, with a degree of caution indicating that the English ministry, infatuated as they were, had yet wit enough to see some hazard in the experiment. The minds of the colonists were first to be prepared, and the first burst of indignant opposition suffered to pass by, before the tax was actually imposed. With a view to this, Lord Grenville, under whose ministry the plan was matured, assembled the agents of the colonies, in the winter of 1763-64, and announced to them his intention to propose, at the next session of parliament, a duty on stamps, for the purpose of raising a revenue from the colonies. He informed them, that his object in apprising them of his intentions at that early period was, to enable them to suggest any other duty, as a substitute, which might be deemed more agreeable; and he desired, that they would consult the wishes of their respective governments upon that subject. (5)

The session arrived; and the ministry, not ready for the onset, were content with the passage of a resolution, declaring, "That it might be proper to charge certain stamp duties in the colonies;" and having put forward this, as a *feeler* for the sentiments of the colonies, the further consideration of the subject was postponed, at their own instance, until the next session of parliament. Professing the utmost

Preliminary  
measures of the  
English minis-  
try.

(5) 1st Franklin's Works, 204; 1st Gordon's America, 111; 1st Bissett's Reign of George 3d, 290. Mr. Grenville merely offered them the privilege of finding a substitute, as an object of parliamentary taxation; and not the privilege of taxing themselves, to raise the sum required. Mr. Burke explains the true nature of the offer, in his celebrated speech on American taxation.—1st Burke's Works, 462.





desire to consult the convenience and good will of the colonies, they styled this postponement "an act of complaisance to them, which was intended to give them an opportunity to provide some substitute equally as productive." They did not, however, suffer this session to pass by, without a prelude to their final purposes. An act was now passed, continuing the duties on certain imports into the colonies; from the harshness of whose protecting penalties, and the arbitrary prosecutions sanctioned for their recovery, the system of restrictions upon the commerce of the colonies derived new features of oppression. (6) At the same period, they transmitted instructions to the colonial officers, directing the most rigorous enforcement of the trade laws, to the entire destruction of a lucrative commerce between the English and the French and Spanish colonies, which had grown up by connivance. The colonists had hitherto drawn a discrimination, between the right to regulate their commerce, which they had conceded to parliament, and the right of mere internal taxation, which they denied; but the course of the English ministry at this period, in imparting to the restrictive system every characteristic of tyranny, was well calculated to destroy the distinction, and to induce the people to retract even their concession of the legality of the former.

In reviewing the conduct of that ministry, we are almost inclined to believe that they acted upon the maxim "that the accumulation of oppression diminishes both the will and the power to resist." Such might have been its effect, upon a people already prepared for their chains, whose craven spirit was willing to avert present suffering, by the surrender of their liberties. It was aimed at a people of a very different cast; and it fell upon them only to rouse all their energies against the oppressor. It left them no middle course, between unqualified submission, and firm and sturdy opposition. The bare intimation, that the designs already accomplished were to be followed up by a stamp tax, uproused the people of every

(6) See the preamble of this act in 1st Pitkin's U. States, 163. It rests the enactments upon the avowed reason "that it was just and necessary, that a revenue be raised in America for defraying the expenses of defending, protecting, and securing the same."





colony. Assemblies remonstrated, public meetings denounced, and agents petitioned; but still to no purpose. The measure was resolved upon; and on the 22d March, 1765, the stamp tax was finally imposed. The interval between the annunciation of the intention to impose it, and its final imposition, had produced an effect very different from that intended or expected by the ministry. Instead of eliciting substitutes, or propositions for a compromise, or wearing away the force of the first burst of indignation, it had only given the people of the colonies time to rally for the opposition, and to concert means for the defence. The subject had been fully discussed amongst them in all its various bearings. The resolutions and treatises, which exhibited these, had been borne to every corner of the colonies. The knowledge of his right, and of the free principles by which they were sustained, was brought home to every man's understanding. The passive were roused; the timid were encouraged; and the bold and adventurous caught fresh hopes and ardor from the unanimity around them. The opposition to the mere proposition of the tax, led naturally to the consideration of the means by which it was to be frustrated, in the event of its actual imposition. Hence, when the act came, it found them with their lamps trimmed, and ready to go forth to meet it.

In investigating the history of this act, much talent has been employed, and much time and research have been expended, in determining to which of the colonies belongs the high honor of having given the first impulse to colonial resistance. If such honor attaches peculiarly to any one of the colonies, the effort to establish its claims is worthy of all research. To have been the advance guard of liberty, in the first great effort which opened the way to the establishment of the first republic upon earth, is enough for immortality; and generous rivalry will accord it, where it is due. Yet it may well be questioned, whether such merit can be properly ascribed to any man or any colony. Such pretensions must assume, as the foundation of the claim, the origination either of the principles of opposition, or of the determination to resist, or of the means of resistance. If the early movements in some of the colonies, in opposition to this act, were but the outbreakings of a common feeling and a common sentiment,

Relative merits  
of the colonies  
in originating  
the resistance to  
the stamp act.



pervading the whole, and waiting every where but for opportunities of manifesting themselves; instead of being impulses to public sentiment, they were but the results of it. If these movements were early, merely because accidental circumstances gave to the colony, in which they were made, the first opportunity of venting that common feeling, they were but the first conductors of already concentrated public indignation. Such was the case in these colonies. The punctured veins only gave out the blood that pervaded the whole system. The tyrant, who wishes to strike the blow in security, should not apprise the victim of its coming; unless he intends it for the passive slave. When the act is resolved upon, to alarm is folly. Yet such was the imbecile policy of the English ministry, and the colonies improved well the interval between the annunciation and the blow. Speeches, resolves, addresses, essays, had brought the public mind to contemplate all the consequences of the proposed measure; and the spirit of resistance was already up, in the formidable shape of combinations. However suppressed that spirit might seem, and ready to submit, when there remained no alternative but open rebellion against the act, the "*master spirits*" in the colonies knew full well, that its rest was but the couching of the lion, and its silence the portentous silence that precedes the storm. Such were Henry of Virginia, and Otis of Massachusetts, in the two great colonies; whose movements against the stamp act, stand first in order and importance upon the page of history. They touched the chord of public feeling, already tremblingly alive; and they knew its response. Their colonies went in advance of the others, in the expression of these sentiments, through their Assemblies; but by the early convention of the latter, after the passage of the act, accident cast upon them the first opportunity of taking the lead in opposition to it. They sounded the first notes of defiance; but these were soon echoed back by colonies, as ready, energetic, and determined in resistance, as they.

It is not our purpose, nor our wish, to say aught in derogation of the high claims of those patriotic colonies, to be cherished in our remembrance as the foremost champions of colonial liberty.

The course of  
Maryland.

Their honor is reflected upon us; and the virtues, and noble bearing of their distinguished sons, adorn





our common history. To have been found firm and faithful by their side "is enough for honor." Yet in the histories of the colonial transactions connected with the stamp act, the course of Maryland seems to have been but little known or understood; and she has been thrown into the rear of the other colonies, as if she had been, by them, stimulated to, and led on, in opposition. Yet her transactions prove, that she wanted no teacher, either to instruct in her rights, or to prompt them to preserve them; and they exhibit a character and unanimity of opposition, that is without a parallel in the history of any colony.

Circumstances of the moment, over which she had no control, prevented this colony from expressing, through her Assembly, her opposition to this measure, not only before the act passed, but also for a long period after its passage. The power to convene the Assembly resided wholly with the governor; and upon the prorogation of it, in November, 1763, its session was postponed, by repeated prorogations, until September, 1765. The Assembly was thus disabled from declaring its decided hostility to the measure, at an earlier period; but its eagerness in the common cause, is displayed not only by the spirited and *unanimous* declaration then made, but still more forcibly, by its remonstrance to the governor, for his delay in convening it at a period, when its members were desirous to unite with their brethren in the other colonies, in the protection of their common liberties. Their message is the best commentary upon the subject. "We are truly concerned (say they in this message, 13th December, 1765,) that the duty we owe to our constituents, lays us under the indispensable necessity of observing, that every power lodged in the hands of government is there entrusted by the constitution, to be exercised for the common good. To this end hath your excellency, as supreme magistrate, the power of convening and proroguing; which, we need not remark, according to the bill of rights, confirmed at the happy revolution, ought, for redress of all grievances, and for amending, strengthening, and preserving of laws, to be held frequently. The unhappy prevalence of the small pox, from the month of March to that of September last, rendered a convention of Assembly within that time impracticable; but we are ignorant of any reasons, that could occasion the long intervention from No-





venber, 1763, to last March; within which time, circumstances of a peculiar nature, required a meeting of Assembly, which was prevented by prorogation. It is incumbent on us, as the representatives of a free people, to remonstrate against that measure; especially, as it prevailed at a time, so very critical to the rights of America; at a time, when the good people of this province ardently wished for an opportunity to express, by their representatives in Assembly, their sense of a scheme, then entertained by the British House of Commons, of imposing stamp duties on the colonies; and for want of which, their involuntary silence, on a subject so interesting and important, has been construed by a late political writer of Great Britain, as an acquiescence in that intended project." "We cannot help expressing our apprehension, (they remark in conclusion) that if we should be now silent, at some future time, when it may be the unhappiness of this province to be under the government of a gentleman less favorable in his inclinations to the interest of America than yourself, the occasion, which has laid us under the disagreeable necessity of troubling your excellency with this assertion of our rights, might be made use of, as a precedent for promoting measures prejudicial to the rights and privileges of the good people of this province." (7) Previously to this, and at the first moment of their assemblage in September, 1765, they had passed resolves against the stamp act, and had deputed commissioners to the general Congress; and this remonstrance is here adverted to, only for the purpose of attesting, that the same spirit, which characterised their first Assembly proceedings after the passage of the stamp act, had prevailed in the colony, from the first moment the tax was proposed.

There were, however, other indications of public feeling, which went in advance of all the Assembly transactions, to demonstrate the general detestation of the measure by the people of Maryland. They had amongst them that admirable reflector of public sentiment, an established and well regulated press, in the paper then conduct-

Early and decisive indications of the sentiments of her people.

(7) This remonstrance was submitted by Thomas Ringgold, Esq., a delegate from Kent county; who was also one of the commissioners from this colony to the Stamp Act Congress.



ed by Mr. Jonas Green, of Annapolis, under the name of "*The Maryland Gazette*." It was established in the year 1745, and has ever since been conducted by his descendants, under that name. Venerable for its antiquity, in which, it is believed, it outranks every existing paper in these United States, it is rendered still more so by its devotion to the cause of liberty, from the very origin of our struggle for emancipation. Yet flourishing in the hands of his descendant, and sustained by his worth, it has been, truly, "*an evergreen*." The influence of the press, even at this day, is known and felt by all, notwithstanding the many causes which have conspired to diminish it; and it may still, in some degree, be relied upon, for its indications of the prevailing temper and sentiments. There were, however, many circumstances, peculiar to that day and the establishment of that paper, which would induce us to look to it, and to rely upon it, for the faithful delineation of the public feeling. It was the only paper of the province; it was the government paper; it had uniformly been conducted with a firmness and moderation, as far removed from the intemperance of passion, as the servility of submission; and its columns were open to free and temperate discussion on all sides. Yet, whilst we find, at every step, continued evidences of the universal opposition to the stamp tax; we look in vain to it, as the only record of the times, for the slightest indications of faltering on the part of any of the people of Maryland. The course of the paper itself was one of determined opposition. The intimation of the ministry's intention to tax the colonies, was first communicated in its number of 17th May, 1764; and from that period, the tenor of its publications continually indicated its hostility to the measure. Its number of the 18th of April, 1765, announced the intention to suspend its publication, if the melancholy and alarming accounts, which had just been received, of the probable passage of the stamp act, should prove true. (8) Its actual passage was communicated in

(8) Some of the short and pithy remarks of this paper, and its mottoes and devices, in reference to the *stamp act*, are quite amusing, and carried with them more power to arrest general attention, than whole columns of argumentation. It thus conveys the certain intelligence of its final passage: "Friday evening last, between 9 and 10 o'clock, we had a very smart thunder gust, which struck a house in one part of the town, and a tree in another.





terms of the highest indignation; and from that period, the columns of this paper were continually crowded with publications, illustrative of the rights of the colonies, and of the necessity of resistance. The operation of the act having commenced, the paper of the 16th October, 1765, was put into mourning, with the expressive motto: "The Maryland Gazette expiring in hopes of a resurrection;" and its publication was, shortly afterwards, actually suspended until the 10th of December following, when it was revived with the avowal "that it should be, as it had been, sacred to liberty, and consequently to virtue, religion, and the good and welfare of its country." These details, connected as they are with the history of the times, cannot be uninteresting; and they are due to one, whose efforts and influence, as an auxiliary in the cause of liberty, were widely felt and highly estimated. (9) His paper was a "*rara avis*" in that day—a government paper warring on the side of the people.

The English ministry displayed some policy in the selection of residents of the colonies, as officers to carry the stamp act into effect; but their selection proved, in the sequel, to be a decree of expatriation to those who accepted the appointment. It was peculiarly so, to the person appointed as stamp-distributor for Maryland. Hood, stamp-distributor for Maryland. Zachariah Hood, the person alluded to, was a native of Maryland, and, at one period, a resident merchant of Annapolis. More of his history we know not; and if the limit of the maxim be just, "*nil de mortuis nisi bonum*," we should wish to know no more. His whole history may be summed up in one sentence: "He was a willing instrument in the hands of a tyrannical ministry, for the op-

tree in another. But we were more *thunderstruck* last Monday, on the arrival of Captain Joseph Richardson, in the ship Pitt, in six weeks from the Downs, with a certain account of the *stamp act* being absolutely passed."

(9) Publications, advocating the cause of the colonies, were transmitted to this paper, even from Virginia. In one of these, the correspondent remarks: "It being well known, that we are, in this colony, deprived of that great support of freedom, the liberty of the press; as the only one we have here, is totally engrossed for the vile purpose of ministerial craft, I must therefore apply to you (who have always appeared to be a bold and honest assertor of the cause of liberty) to give it a place in your next paper, &c." Green's Gazette of October 17th, 1765.





pression of the people amongst whom he was born and had lived." His appointment was announced in a letter from London to a gentleman of Annapolis, published about the period of his arrival. "Among the many other promotions of officers in the colonies, (it remarks,) we are credibly informed that Z——h H——d, late a sojourning merchant of the city of Annapolis, but at present Z——h H——d, Esq. at St. James', has, for his many eminent services to his king and country during the late war, got the commission of Distributor of the Stamps in that province. This gentleman's conduct is highly approved of here, by all court-cringing politicians; since he is supposed to have wisely considered, that if his country must be *stamped*, the blow would be easier borne from a native, than a foreigner, who might not be acquainted with their manners and institutions." (10)

Coming under such auspices, and with such purposes, his arrival at Annapolis was welcomed with those marks of *distinction*, His reception in the colony. which it was so customary to confer upon the stamp distributors of that day: but, fortunately for him, they were bestowed upon his effigy. (11) The news of his arrival soon spread through the province; and his patriotism was honored in the same significant manner, at Baltimore, Elk Ridge, Fredericktown, and other places. (12) The character of these proceedings must not be misunderstood. They were not the

(10) Published in Green's Gazette of 22d August, 1765.

(11) The following is the account of his reception, published in Green's Gazette of August 29th, 1765.

"Monday morning last, a considerable number of people, *assertors of British American privileges*, met here to show their detestation of, and abhorrence to, some late tremendous attacks on liberty: and their dislike to a certain late arrived officer, *a native of this province*. They curiously dressed up the figure of a man, which they placed on a one horse cart, malefactor-like, with some sheets of his paper in his hands before his face. In this manner, they paraded through the streets of town till noon, the bells at the same time tolling a solemn knell, when they proceeded to the Hill; and after giving it the Mosaic law at the whipping post, placed it in the pillory, from whence they took it, and hung it to a gibbet erected for that purpose, and then set fire to a tar barrel underneath, till it fell into the barrel. By the many significant nods of the head, while in the cart, it may be said to have gone off very penitently."

(12) Green's Gazette of September, 1765.



heedless and ungovernable movements of tumultuous spirits, nor the wanton outrages of men without character. They sprang from the just and settled indignation of a whole people. They were conducted with calmness and publicity, and were promoted by men of the highest talents and character. They were not mere personal indignities offered to the unworthy instrument of the crown; but acts of deliberate and open defiance, intended to manifest, in a manner not to be misunderstood, their determined opposition to the stamp act, and their utter abhorrence of all who lent themselves to its enforcement. Amongst those who were prominent in the proceedings at Annapolis, was the distinguished *Samuel Chase*, whose energies quickened all that he touched, and whose abilities illustrated all that he examined. Just arrived to manhood, he already gave promise of that happy combination of talents, for which he was afterwards eminent beyond the reach of rivalry; when all eyes were turned upon him, to acknowledge the profound lawyer, the eloquent advocate, the resistless orator of the people, and the unrivalled leader of deliberative assemblies. Honored by his fellow citizens, even at this early period, with a seat in the legislature, he was already conspicuous, at the age of twenty-four, as the champion of colonial liberties. He, himself, has characterised these proceedings in the following energetic language, which is extracted from an indignant reply to an attack made upon him by the municipal authorities of Annapolis, in a publication, after the repeal of the stamp act, relative to the city affairs, in which he was described "as a busy, restless incendiary, a ringleader of mobs, a foul-mouthed and inflaming son of discord and faction, and a promoter of the lawless excesses of the multitude." "Was it a mob (he replies,) who destroyed, in effigy, our Stamp Distributor? Was it a mob who assembled here from the different counties, and indignantly opened the public offices? Whatever vanity may whisper in your ears, or that pride and arrogance may suggest, which are natural to despicable tools of power, emerged from obscurity and basking in proprietary sunshine; you must confess them to be your superiors, men of reputation and merit, who are mentioned with respect, while you are named with contempt, pointed out and hissed at, as '*fruges consumere nati*.' I admit that I was one of those who committed to the flames, in





effigy, the Stamp Distributor of this province, and who openly disputed the parliamentary right to tax the colonies; while you skulked in your houses, some of you asserting the parliamentary right, and esteeming the stamp act a beneficial law. Others of you meanly grumbled in your corners, not daring to speak out your sentiments." (13)

An incident occurred soon after Hood's arrival, which rendered him still more obnoxious to the people of the province.

His expulsion and ultimate fate. Finding himself the object of general detestation, he endeavored to palliate his conduct by the assertion, that the office which he held, had been solicited by a member of the Assembly, who had offered a large sum

(13) The whole of this reply, written in July, 1766, and appended to Green's Gazette of June 25th, 1767, is written in the same bold and vigorous style. Although abounding in personal reflections, and savouring too much of coarse invective, it is strikingly characteristic of that undaunted spirit, and fierce independence, which prominently marked, throughout life, the character of Mr. Chase. These traits of character, sometimes imparted to his conduct a harsh and arbitrary aspect, which provoked enmity, by seeming to disregard it: but in the estimation of those whom he honored with his friendship, they were redeemed by the noble and generous qualities of the heart which lay beneath. Those whose delight it is to spy into character, as some modern philosophers examine the sun, only for the purpose of finding spots in it, may dwell with pleasure upon this imperfection, for such it was: but more generous minds will not look "as if darkly through a glass," at the character of such a man as Samuel Chase, for the purpose of excluding the brilliant qualities, which threw into the shade all his foibles. The puny critic may do this, whose feeble vision is unable to withstand the dazzle of such qualities. Yet, if to anatomize human character for the discovery of its faults, be the first requisite to its proper estimate—and he, who attempts it, has even the moral sanction, in his own exemption from frailties—for the proper conception of such a character as that of Mr. Chase, he must carry himself beyond the silken age in which we live, to the age that made men, and tried men's souls. Mr. Chase sprang into active life at the very period when the American colonies, planted by freemen, having grown up to maturity in the enjoyment of liberty; and, having worked out their own deliverance by the energies of a spirit that shrank from no danger or privation—were, for the first time, to be taught unqualified submission to the irresponsible power of parliament. Around him were the minions of that power, who were willing to sell their birth-right for the pottage that rewarded its surrender,—ready to be slaves, for the sake of being overseers. The spirit of independence naturally grows harsh at such a spectacle; and spurns the





for the bestowment of it: and that, therefore, the people ought not to spend their whole fury upon him for his acceptance of it. The person pointed at by this slanderous assertion, was Thomas Ringgold, then a delegate from Kent county, and afterwards conspicuous in the transactions of Maryland, as one of her commissioners to the Stamp Act Congress, and the author of the remonstrance to the governor already alluded to. This rumour, set on foot by Hood, drew from Mr. Ringgold the following noble and indignant reply, which spoke the general sentiment of the province. "I hope (says he,) that my conduct has been such, both in public and private stations, as to induce *a general belief*, that I have the feelings of humanity, am a friend to liberty, and love my country. I should be extremely sorry, by an act so truly

mere courtesies of life, when they have become the robe that cloaks the servile soul. The predominance of seeming sanctity, has driven virtuous hearts from the loathing of hypocrisy, even to the rejection of the decent observances of religion—the licentiousness of an age, has made virtue shrink from the proper familiarities and endearments of life, and purity become austerity. The reign of Charles I. made fanatics; fanaticism made hypocrisy: and the wild fanaticism, and hypocrisy in the garb of austerity, which preceded it, produced the licentious age of the second Charles. The age in which began the struggle of our colonies for independence, was well calculated to give any free spirit the "*fortiter in modo*," as it has been called: and the long continuance of it, in the midst of disaffection and treachery, to form a character determined and unbending, even to sternness—The men of the revolution were not formed in sunshine, nor made "to court an amorous looking glass."

Thrown thus into the midst of an age calculated to uprouse, even in vehemence and harshness, the bold and indignant spirit of a freeman, Mr. Chase was assailed, in the very outset of his career, by the courtly adherents of the royal cause, with whom his boldness was faction, and his vehemence arrogance. In his encounters with such as these, he disdained all reserve, and gave no quarter. "*Seeming*," he learned to despise: and there never was a man, who could say with Hamlet, more justly than Mr. Chase, "*I know not seems*." What he felt, he expressed: and, what he expressed, came stamped with all the vigor of his mind, and the uncompromising energy of his character—if his manner was a fault, it leaned to virtue's side. It is not for my feeble pen to portray his virtues and abilities—they are registered in the nation's history: and there is no true American, to whom his name, recorded on the imperishable roll of American Independence, does not bring back the grateful recollection of his services. He was a son of Maryland: and when will she have his like again?



contemptible, to have afforded room for a contrary opinion. I therefore beg the liberty publicly to declare, through your paper, that no consideration should have induced me to have had any hand in the execution of a law, tending to the subversion of our dearest rights as freeborn subjects of England, and to the suppression of the freedom of the press." (14) There is a moral force in public sentiment, before which the instruments of tyranny cower. Hood wanted the firmness, even to attempt the execution of the office which he had solicited; and the public indignation, which had been lavished upon his effigy, at length taking a direction towards his person, he secretly absconded from the province early in September, 1765, and never paused in his flight, until he had reached New York, and had taken refuge under the cannon of Fort St. George. (15) He was the first and last stamp-distributor of Maryland.

The Assembly was at length convened on the 23d September, 1765; and the *Stamp Act* was the first subject which engaged its attention. Its members required no time for discussion or deliberation, as to the course they should pursue. The *fiat* of public sentiment had already

First Assembly  
after the Stamp  
Act.

(14) This publication of Mr. Ringgold's, is dated 27th August, 1765, and appeared in Green's Gazette of 5th September, 1765.

(15) Hood's flight was insufficient to save him from the common fate of the stamp-distributors, a resignation by compulsion. He only escaped from the resentment of one colony, to be arrested by the sisterly indignation of another. Having taken up his residence on Long Island, he soon attracted the attention of the people, and the liberals at once determined, (to use their own language,) that as he had by flight deprived the people of Maryland of that justice which they had a right to demand, the resignation of an office calculated to enslave them; they would take the affair into their own hands, and either compel him to resign, or send him back to Maryland as a fugitive from justice.

A party of volunteers accordingly assembled on the 28th of November, 1765, and surrounded the house on Long Island, in which he was concealed. Escape was impossible: and poor Hood was hooded. He now threw himself upon their sympathies, and represented himself as one rather to be pitied than to be punished. His appeals to mercy were all unavailing: and his next attempt was at a compromise. He now desired, that his word of honor might be received in lieu of his oath; and that the right might be reserved to him to hold his office, if hereafter his countrymen should desire it. He was answered, that the people of Maryland having an absolute right to freedom, he must absolutely and unconditionally renounce an office, which gave him power to





gone forth in determined hostility to the act; and it only remained for the Assembly to register its decree. In some instances, to prevent all possible misapprehension, the members were specially instructed by their constituents. Those given at that period by the people of Anne Arundel county to their representatives, Messrs. Werthington, Hammond, Hall, and Johnson, have been preserved, and are distinguished by their manly sentiments and vigorous style. After a full examination of their claims to exemption from taxation not sanctioned by their assent, founded both upon the express language of the charter of Maryland, and their liberties as English subjects, they present its result in the following forcible language: "Hence the foundation of our claim, to be affected by no law, nor burdened with any kind of tax, but what is laid upon us by the assent of our representatives in Assembly convened, agreeably with the fundamental laws of the constitution of our mother country; our rights and privileges as Englishmen, declared and confirmed by our charter; and the uninterrupted usage and practice of our province, from its first settlement to the present time. And we do unanimously protest against our being charged in any other manner, and by any other powers whatsoever; and we do request of you, our representatives, that this our protest may be entered, and stand recorded, in your journal, amongst the proceedings of your house, if it may be regularly done." (16)

The circular from the Assembly of Massachusetts, inviting the other colonies to unite with them in the appointment of com-

enslave them; and that if this were not done, he should be delivered into the hands of an exasperated multitude, and carried back to Maryland, with labels upon him, signifying his office and designs. Resistance was hopeless, and Hood yielded. As soon as his abjuration was signed, he was accompanied by upwards of one hundred gentlemen, from Flushing to Jamaica, where it was regularly sworn to, and he was discharged. Like the similar abjurations of that day, it left no room for equivocation or mental reservation, and abounded with apologies and excuses, utterly at variance with the known feelings of the individual, and only serving to render him contemptible and harmless.

(16) These instructions were given on the 7th of September, 1765, and are published at large in Green's Gazette of 24th October, 1765.





Its proceedings  
upon the propo-  
sition for a gene-  
ral congress.

missioners to a general congress, to be held at New York, was immediately taken up for consideration, by this Assembly; and, passing by all other business, on the second day of their session, they concurred in the proposition, and appointed commissioners, and a committee to draft their instructions. These commissioners were Col. Edward Tilghman, of Queen Anne's, William Murdock, of Prince George's, and Thomas Ringgold, of Kent. They were appointed solely by the lower house, but the measure was approved and sanctioned both by the upper house and the governor, who concurred in the passage of an ordinance intended to meet the expenses of the embassy. The instructions given to these commissioners, directed them to repair to the congress, "there to join in a general and united, dutiful, loyal, and humble representation to his Majesty and the British parliament, of the circumstances and condition of the British colonies; and to pray relief from the burdens and restraints lately laid upon their trade and commerce, and especially from the taxes imposed by the stamp act, whereby they are deprived, in some instances, of that invaluable privilege of Englishmen and British subjects, trials by juries; and to take care that such representation should humbly and decently, *but expressly*, contain an assertion of the right of the colonists, to be exempt from all and every taxations and impositions upon their persons and property, to which they do not consent in a legislative way, either by "themselves, or their representatives freely chosen and appointed." (17)

Having thus speedily and efficiently concurred in the proposition for a general congress, it now remained for them to declare, in a more formal and explicit manner, the character and tendencies of the late measures of the English parliament. Addresses and resolves were the order of the day; but in Maryland, some solemn and explicit declaration of their feelings was rendered peculiarly necessary, by the attempts to misrepresent them in England. The resolves, now

Its resolves  
against the  
stamp act.

(17) The members of the committee, by which these instructions were drafted, were, James Hollyday, of Queen Anne's, Thomas Johnson, of Anne Arundel, Edmund Key, of St. Mary's, John Goldsborough, of Talbot, John Hammond, of Anne Arundel, Daniel Wolstenholme, of St. Mary's, and John Hanson, Jr., of Charles.



*unanimously* adopted, were sufficient to dispel all doubts in the minds of the ministry, if any such existed, as to the cordial concurrence of Maryland with the refractory colonies. They were reported by a committee, consisting of Messrs. William Murdock of Prince George's, Edward Tilghman of Queen Anne's, Thomas Ringgold of Kent, Samuel Chase of Annapolis, Samuel Wilson of Somerset, D. Wolstenholme of St. Mary's, John Goldsborough of Talbot, John Hammond of Anne Arundel, Henry Holyday of Talbot, Charles Grahame of Calvert, Edmund Key of St. Mary's, and Brice T. B. Worthington of Anne Arundel, and were unanimously adopted and ordered to be published on the 28th of September, 1765. Pre-eminent amongst all the legislative declarations of the colonies, for the lofty and dignified tone of their remonstrances, and for the entire unanimity with which they were adopted, they form one of the proudest portions of our history.

I. *Resolved, unanimously*, That the first adventurers and settlers of this province of Maryland brought with them and transmitted to their posterity, and all other his Majesty's subjects, since inhabiting in this province, all the liberties, privileges, franchises, and immunities, that at any time have been held, enjoyed, and possessed, by the people of Great Britain.

II. *Resolved, unanimously*, That it was granted by magna charta, and other the good laws and statutes of England, and confirmed by the petition and bill of rights, that the subject should not be compelled to contribute to any tax, talliage, aid, or other like charges not set by common consent of parliament.

III. *Resolved, unanimously*, That by a royal charter, granted by his Majesty, king Charles I. the eighth year of his reign and in the year of our Lord one thousand six hundred and thirty-two, to Cecilius, then Lord Baltimore, it was, for the encouragement of people to transport themselves and families into this province, amongst other things, covenanted and granted by his said Majesty for himself, his heirs, and successors, as followeth:

"And we will also, and of our more special grace, for us, our heirs and successors, we do strictly enjoin, constitute, ordain, and command, that the province shall be of our allegiance, and that all and singular the subjects and liege people of us, our heirs, and successors, transported into the said province, and the chil-





dren of them, and of such as shall descend from them, there already born, or hereafter to be born, be, and shall be denizens and lieges of us, our heirs, and successors, of our kingdom of England and Ireland, and be in all things held, treated, reputed and esteemed, as the liege faithful people of us, our heirs, and successors, born within our kingdom of England, and likewise any lands, tenements, revenues, services, and other hereditaments whatsoever, within our kingdom of England, and other our dominions, may inherit, or otherwise purchase, receive, take, have, hold, buy and possess, and them may occupy and enjoy, give, sell, alien, and bequeath, as likewise, all liberties, franchises and privileges, of this our kingdom of England, freely, quietly, and peaceably, have and possess, occupy and enjoy, as our liege people, born, or to be born, within our said kingdom of England, without the let, molestation, vexation, trouble, or grievance, of us, our heirs and successors, any statute, acts, ordinance, or provision, to the contrary thereof, notwithstanding.

“And further, our pleasure is, and by these presents, for us, our heirs and successors, we do covenant and grant, to and with the said now Lord Baltimore, his heirs and assigns, that we, our heirs and successors, shall at no time hereafter, set or make, or cause to be set, any imposition, custom, or other taxation, rate or contribution whatsoever, in or upon the dwellers and inhabitants of the aforesaid province, for their lands, tenements, goods or chattels, within the said province, or in or upon any goods or merchandizes within the said province, or to be laden and unladen within any of the ports or harbours of the said province: And our pleasure is, and for us, our heirs and successors, we charge and command, that this our declaration shall be henceforward, from time to time, received and allowed in all our courts, and before all the judges of us, our heirs and successors, for a sufficient and lawful discharge, payment and acquittance: commanding all and singular our officers and ministers of us, our heirs and successors, and enjoining them upon pain of our high displeasure, that they do not presume, at any time, to attempt any thing to the contrary of the premises, or that they do in any sort withstand the same; but that they be at all times aiding and assisting, as it is fitting, unto the said now Lord Baltimore, and his heirs, and to the inhabitants and merchants of Maryland





aforesaid, their servants, ministers, factors, and assigns, in the full use and fruition of the benefit of this our charter."

IV. *Resolved*, That it is the *unanimous* opinion of this house, that the said charter is declaratory of the constitutional rights and privileges of the freemen of this province.

V. *Resolved, unanimously*, That trials by juries are the grand bulwark of liberty, the undoubted birth-right of every Englishman, and consequently of every British subject in America; and that the erecting other jurisdictions for the trial of matters of fact, is unconstitutional, and renders the subject insecure in his liberty and property.

VI. *Resolved*, That it is the *unanimous* opinion of this house, that it cannot, with any truth or propriety, be said, that the freemen of this province of Maryland, are represented in the British parliament.

VII. *Resolved, unanimously*, That his Majesty's liege people of this ancient province, have always enjoyed the right of being governed by laws, to which they themselves have consented, in the articles of taxes and internal polity; and that the same hath never been forfeited, or any other way yielded up, but hath been constantly recognized by the king and people of Great Britain.

VIII. *Resolved*, That it is the *unanimous* opinion of this house, that the representatives of the freemen of this province, in their legislative capacity, together with the other part of the legislature, have the sole right to lay taxes and impositions on the inhabitants of this province, or their property and effects; and that the laying, imposing, levying, or collecting, any tax on or from the inhabitants of Maryland, under colour of any other authority, is unconstitutional, and a direct violation of the rights of the freemen of this province.

Declining to enter upon the consideration of any other business, the lower house now desired the governor to grant them a recess of a few weeks, most probably for the purpose, although not expressly avowed, of awaiting the issue of the proceedings of the Continental Congress. Their request was gratified, and the Assembly prorogued until the first of November. Before the prorogation, the governor sought the advice of the lower house as to the secure disposition of the stamp paper, the arrival of which was now momentarily expected.

Disposition of  
the Stamp Paper.



This, however, they declined to give, as relating to a subject upon which they had not consulted their constituents; and the governor, in this emergency, found it necessary to throw himself, for direction, upon his constitutional advisers, the members of the upper house, who had no such scruples, and were always more prone to the side of prerogative. They assured him that there was no place of security, to protect it from the attempts to destroy it, which would inevitably be made; and they therefore advised its deposit on board one of his majesty's ships on the Virginia station, until further orders from the ministry.

On reviewing these proceedings of the first Assembly of Maryland after the passage of the stamp act, it is apparent, that

Character of the Proceedings of this Assembly. humble as her pretensions have been, and lightly as they have been considered, they may be proudly contrasted with those of any other colony. They

exhibit an unanimity in opposition to the act, amongst all classes of people and all branches of her government, which is without a parallel. Firm yet temperate, her public remonstrances breathe the genuine spirit of determined freedom, unalloyed by the language of passion or the temper of anarchy. It must, however, be admitted, that, perhaps, some of this unanimity was attributable to the character of her government. The interests of the proprietary were as adverse to the right of internal taxation then claimed for parliament, as were those of the people at large; and although his government did not deem it prudent to put itself in direct opposition to the crown, it naturally felt but little interest in the success of a claim, which, whilst it oppressed the people and exhausted their resources, at the same time impaired the power and influence of the proprietary.

The contributions of Maryland to the common cause, did not consist merely in the concurrence of her people and her Assem-

Political Essays of that period. blies with those of the other colonies, in the adoption of measures to frustrate the operation of the act.

All such measures proceeded upon the assumption, that exemption from parliamentary taxation was an unquestionable right of the colonies; and they derived much of their efficacy from the general conviction of that right. To have unsettled that conviction, would have effected more towards the submission of the colonies, than could have been accomplished by all the remon-





strances and menaces of the English government. With many whose feelings were warmly enlisted on the side of the people, it required but little persuasion or argument to establish that right. It was enough for them to know that it was a right, justified by the then condition of the colonies, and demanded for the perfect security of their liberties. They wanted neither prescription nor precedent, to give it sanctity; and they regarded it as a right, not to be lost by nonuser, nor prescribed against by contrary precedent. They reasoned from the nature, objects, and proper securities, of government in general; and they reasoned rightly. Yet in all such controversies in every age, there are many who look for antiquity and acknowledgment as the test of such rights, and who resist as an usurpation what they would not insist upon as an original principle. The English ministry were aware of this; and hence the English presses teemed with venal publications, striking at the very foundation of the colonial claim, which at one moment artfully appealed in the language of seeming justice and moderation to the colonists themselves, and at the next addressed themselves to all the jealousies and prejudices of the mother country. This required an antidote; and virtue and talent sprung up every where in the colonies to administer it.

Conspicuous amongst all the essays of that day in opposition to the stamp act, is one to the honor of which Maryland lays claim, as the production of her most distinguished son. It came from the pen of one, whose very name was a tower of strength. Abilities that defied competition, learning that ranged with an eagle-flight over every science, accomplishments that fascinated, and gentleness that soothed even envy, all conspired to render *Daniel Dulany* the fit advocate of such a cause. His celebrated essay against the stamp act, entitled, "*Considerations on the propriety of imposing taxes in the British colonies, for the purpose of raising a revenue by act of Parliament,*" was published at Annapolis on the 14th of October, 1765. It was not an argument calculated merely for the meridian of Maryland. This province had a peculiar charter exemption: but the claims founded on this, did not enter into the consideration of the general question, and resting upon express grant, they were rather in conflict with those, in support

Essay of Daniel  
Dulany of Ma-  
ryland, against  
the stamp act.





of which no such grant could be adduced. Mr. Dulany had a higher aim. His purpose was to show, that under the principles of the British Constitution, and by force of their condition as British subjects, the colonists generally were exempt from the tax imposed; and he has accomplished this, by a mode of argument the most irresistible. Instead of putting himself afloat upon the whole question, as to the general extent of the authority of the mother country over the colonies, he narrows down the discussion to the exact power exercised by the stamp act; the power to impose internal taxes on the colonies, without their consent, for the single purpose of revenue; and he then conducts the discussion by appealing entirely to British authority and British precedent. He thus drives his adversaries to the necessity of combating with the principles of the English constitution itself.

This celebrated essay sets out with the position, that no inhabitant of the colonies was either actually or virtually represented in the English parliament. That there was no actual representation,

*its outlines.*

was conceded; that there was a virtual representation, was sustained by analogies drawn from the condition of the non-electors in England, who were deemed to be represented, although not participating in the election of representatives. Without assailing this idea of a virtual representation, which is in fact a mere cover to the partial and imperfect nature of the representative system in England, and, for the sake of the argument, conceding its existence to be tantamount to actual representation, he proceeds to show the entire failure of the analogy, from the entire dissimilarity between the condition of the non-electors in England and of the colonists here. The former had the capacity to become electors, by acquiring the property to which the elective franchise attached; the latter could not, but by losing their residence in America, and therefore, ceasing to be colonists: from their common residence in England, all the relations and interests of the former, were closely connected or blended with those of the electors, so that legislation could seldom, if ever, be brought to bear upon those of the former without affecting those of the electors; the latter had many important interests, entirely distinct from those of the mother country, which might be seriously affected by such legislation, whilst it would not reach the interest of a single English elector; the former had no



other representatives, were subject to no other taxing power if not to that of parliament, and had always been thus taxed; the latter were subject to a regular and adequate authority to tax, vested in their colonial legislatures, and to that authority, the requisitions of revenue by the English government had always been addressed. The position, "that the colonies were not represented in Parliament," being established, their exemption from taxation by it was the necessary consequence of an essential principle of the English constitution, resulting from the very nature of the mixed government of England, existing at the common law, confirmed by Magna Charta and the Bill of Rights, following the emigrants as British subjects, and yet further guaranteed to them by the charters of their colonies. These charters, in conferring English liberties, were not mere grants of the crown in derogation of the superior power of Parliament, but compacts with it, for better security, that the existing and unalienable rights of the English subject should not be impaired by his removal. "This right of exemption from all taxes, without their consent, (says he) the colonists claim as *British subjects*. They derive this right from the common law, which their charters have declared and confirmed; and they conceive, that when stripped of this right, whether by prerogative or by any other power, they are, at the same time, deprived of every privilege distinguishing free men from slaves."

He then passes, in review, the previous exercises of parliamentary power, relied upon as precedents, for the purpose of demonstrating, that they were elicited by a necessity, to which the ordinary colonial legislation was not adequate, and that in no instance was revenue their single or even direct purpose; and he concludes his argument by suggesting to his countrymen, a remedy against the oppressions of England, as novel, as it was efficient. The suggestion of it displays his far-reaching sagacity, and proclaims him the genuine father of the genuine *American system*. England manufactured for the colonies the very necessaries of life. He advised the colonies to manufacture for themselves. His language is worthy of preservation. After directing the attention of the public particularly to the manufacture of coarse clothing, he remarks: "In this very considerable branch, so little difficulty is

The remedy  
against colonial  
oppression indi-  
cated by it.





there, that a beginning is half the work. The path is beaten, there is no danger of losing the way, there are directors to guide every step. But why should they stop at the point of clothing laborers; why not proceed, when vigor and strength will increase with the progression, to cloathe the planters? When the first stage is arrived at, the spirits will be recruited, and the second should be undertaken with alacrity, since it may be performed with ease. In this too, the experiment hath been made, and hath succeeded. Let the manufacture of America be the symbol of dignity, the badge of virtue, and it will soon break the fetters of distress. A garment of linsey-woolsey, when made the distinction of real patriotism, is more honorable and attractive of respect and veneration, than all the pageantry, and the robes, and the plumes, and the diadem of an emperor without it. Let the emulation be not in the richness and variety of foreign productions; but in the improvement and perfection of our own. Let it be demonstrated, that the subjects of the British empire in Europe and America are the same, that the hardships of the latter will ever recoil upon the former. In theory it is supposed, that each is equally important to the other, that all partake of the adversity and depression of any. The theory is just, and time will certainly establish it; but if another principle should be ever hereafter adopted in practice, and a violation deliberate, cruel, ungrateful, and attended with every circumstance of provocation, be offered to our fundamental rights, why should we leave it to the slow advances of time (which may be the great hope and reliance, probably, of the authors of the injury, whose view it may be to accomplish their selfish purposes in the interval) to prove what might be demonstrated immediately. Instead of moping, and puling, and whining to excite compassion; in such a situation, we ought with spirit, and vigor, and alacrity, to bid defiance to tyranny, by exposing its impotence, by making it as contemptible as it would be detestable. By a vigorous application to manufactures, the consequence of oppression in the colonies to the inhabitants of Great Britain would strike home and immediately. None would mistake it. Craft and subtilty would not be able to impose upon the most ignorant and credulous; for if any should be so weak of sight as not to see, they would not be so callous as not to feel it. Such conduct would be the





most dutiful and beneficial to the mother country. It would point out the distemper, when the remedy might be easy, and a cure at once effected by a simple alteration of regimen."

Such was the general tenor of this distinguished essay, which at once placed its author in the first rank amongst the political writers of that day. It had all the characteristic features of effective political essays; its style easy, its thoughts perspicuous, its illustrations simple, its language energetic, and its arguments addressed to every understanding. Although not published under the name of Mr. Dulany, it wanted no such voucher to designate him as its author. It bore the impress of his talents, and espoused his known sentiments. Public opinion at once pointed to him as its author; and his own ready avowal clearly indicated, that concealment had not been his purpose in the manner of its publication. The objects of the essay, and the course of the author, were characterised by the same moderation. Upon the question of right, the essay was free, fearless, and uncompromising; but the modes of resistance to the stamp act, inculcated by it, were of a gentle and pacific character, not altogether adapted to the temper of the times, but not less effectual than open rebellion against the act if resolutely adhered to. Open and forcible resistance was the mode of opposition recommended by the feelings of the colonists; and they at once adopted it with an impetuous indignation, which never paused to calculate the hazard of their measures, nor to contemplate their probable results. Yet the proposition to erect an independent government, would at that period have startled the boldest; and the force to which they resorted, was not regarded as a step towards actual separation from the mother country. For such a crisis, the feelings of the people and the resources of the colonies were not yet prepared. Whilst the hand of violence was every where uplifted to repel the act, it was accompanied by remonstrances and supplications, which spoke the wishes of men still clinging to the justice and generosity of their opponents for their hopes of relief. Ultimate reconciliation with England, was then the wish and hope of every heart; and therefore some of the best friends of the colonies doubted the policy of harsh measures, as only calculated to widen the breach, and prolong the oppression. "Go home, (said Dr. Franklin,) and tell your countrymen to get



children as fast they can." "Shake off the trammels of your industry, (said Mr. Dulany,) rely upon your own resources for the supplies of life; and the commercial interests of England will soon bring your adversaries to your feet." The subsequent conduct of the latter, was in perfect keeping with the course of opposition he recommended; and therefore maintaining his original policy, he refused his approbation to the more violent measures adopted and accomplished by "the sons of liberty." (18) The character and result of those measures will appear hereafter; and it will here suffice to remark, that although brought to bear upon Mr. Dulany himself, as one of the resisting, they lost him none of the confidence and affection of the colony. For professional learning and general ability, he had long been conspicuous; as the defender of colonial liberties, he now acquired more extensive and gratifying distinction. He became the *Pitt* of Maryland; and whilst his fellow citizens hailed him, with one voice,

(18) Mr. Dulany, during this period, was the Secretary of the Province: and when the association of the sons of liberty was formed, he, and the other officers of the province, were notified of their intention to come to Annapolis and compel the officers to transact business without the use of stamped paper. Thus notified, he submitted himself to the advice of the Governor and Council, apprising them at the same time, that in acceding to this measure, he would act against his own sentiments, and would not hesitate to lay down his office to avoid such an issue, were it not that by so doing, he would cast upon the governor the necessity of making a new appointment requiring the use of stamped paper, and with it a responsibility, which might bring even the person of the latter into jeopardy. "He (says Mr. Dulany in his letter to the Executive) seems to have as little power to protect himself as I have: but if that respect should be openly and violently trampled upon, and personal indignities be offered, the example and the consequences would be much worse in his case, than in that of a subordinate officer constrained to yield to the times." The council seem to have put this application under "an advisare:" and in the meantime the sons of liberty came, and placed Mr. Dulany, as well as the others, in the condition of "*officers constrained to yield to the times.*" Thus to have thrown himself into the breach, for the protection of the governor, and at the hazard of all the reputation he had acquired, evinced a magnanimity which even his enemies must admire. The honors lavished upon Mr. Dulany after the repeal of the Stamp Act, abundantly demonstrate, that his course on this occasion had, in no degree, diminished the respect and affection of the colony, and furnish the strongest possible attestations to the purity of his motives and the consistency of his course.





as the great champion of their liberties, even foreign colonies, in their joyous celebrations of the repeal of the act, did not hesitate to place him in their remembrances with a Camden and a Chatham. (19)

All eyes were now turned to the continental Congress, which assembled at the city of New York on the first Tuesday of October, 1765. In that Congress, there appeared Proceedings of the Continental Congress. twenty-eight deputies, representing the several states of Massachusetts, Rhode Island, Connecticut, New York,

(19) "*To die and be forgotten*," is the common fate of mortals; the stern award from which talents and learning are ever striving to escape. For the ideal existence of the future, the being which dwells in a name, how many have foregone all the enjoyments of the present. The ambitious heart, in every age yearning for immortality, has toiled away existence, as the caterpillar, in the construction of its own monument. As each generation passes down the stream of time, with all its wrecked hopes and promises and fading glory around it; it is succeeded by another as full of vanities and delusive expectations. Each wave of life may whelm some votary of fame, sinking to oblivion in the midst of all his bright anticipations; yet men look on, and hope that such is not their doom. If lessons upon the vanity of human hopes would avail, here is an individual, over whose history we might pause, to learn how insufficient are all the brightest qualities of the mind, to rescue the memory of their possessor from the common doom of mortality. But half a century has gone by; and the very name of *Daniel Dulany* is almost forgotten in his native State, where the unquestioned supremacy of his talents was once the theme of every tongue, and the boast of every citizen.

In the colonial history of Maryland, the name of Dulany is associated with virtue and abilities of the highest order. Daniel Dulany the elder, the father of the distinguished person alluded to in the text, was as conspicuous amongst cotemporaries, as his more accomplished son; and enjoyed a reputation in the province, surpassed only by that of the latter. Of his origin and early history, I have been unable to collect any accurate information. He was admitted to the bar of the provincial court in 1710; and from that period, his career was one of uninterrupted honor and usefulness. For nearly forty years, he held the first place in the confidence of the proprietary, and the affections of the people. During that period, he filled the various offices of Attorney General, Judge of the Admiralty, Commissary General, Agent and Receiver General, and Councillor, the latter of which he held under the successive administrations of governors Bladen, Ogle, and Sharpe. He was also, for several years, a member of the lower house, in which capacity he was distinguished as the leader of the country party, in the controversy about the extension of the English statutes.

His son, Daniel Dulany, *the greater*, (if we may use such a term) is said to





New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina; and amongst them were present all the commissioners appointed on the part of Maryland. The proceedings of that Congress have already been recorded by abler pens. Their declaration of the rights and grievances of the colonies, their address to the crown, and their petition to the parliament, are documents which would confer imperishable honor upon any age, or any people. Denying the right, and exposing the impolicy, of measures destructive of the dearest interests of the colonies, their

have been educated in England, and was admitted to the bar of the provincial court in 1747. In 1757, he was appointed one of the Council, and in 1761, the Secretary of the Province, which offices he held in conjunction from the latter period until the American revolution. For many years before the downfall of the proprietary government, he stood confessedly without a rival in this colony, as a lawyer, a scholar, and an orator; and we may safely hazard the assertion, that in the high and varied accomplishments which constitute these, he has had, amongst the sons of Maryland, but one equal and no superior. We may admit, that tradition is a magnifier, and that men seen through its medium and the obscurity of half a century, like objects in a misty morning, loom largely in the distance. Yet with regard to Mr. Dulany, there is no room for such illusion. "*You may tell Hercules by his foot,*" says the proverb; and this truth is as just, when applied to the proportions of the mind, as to those of the body. The legal arguments and opinions of Mr. Dulany, which yet remain to us, bear the impress of abilities too commanding, and of learning too profound, to admit of question. Had we but these fragments, like the remains of splendor which linger around some of the ruins of antiquity, they would be enough for admiration. Yet they fall very far short of furnishing just conceptions of the character and accomplishments of his mind. We have higher attestations of these, in the testimony of cotemporaries. For many years before the revolution, he was regarded as an *oracle* of the law. It was the constant practice of the courts of the province, to submit to his opinion every question of difficulty which came before them; and so infallible were his opinions considered, that he who hoped to reverse them was regarded "as hoping against hope." Nor was his professional reputation limited to the colony. I have been credibly informed, that he was occasionally consulted from England upon questions of magnitude: and that in the southern counties of Virginia adjacent to Maryland, it was not unfrequent to withdraw questions from their courts and even from the Chancellor of England, to submit them to his award. Thus unrivalled in professional learning, according to the representations of his cotemporaries, he added to it all the power of the orator, the accomplishments of the scholar, the graces of the person, and the suavity of the gentleman. Mr. Pinkney, himself the wonder of his age, who saw but the setting



eloquent vindication of colonial rights is fraught with appeals, to the reason, the justice, and the sympathies of their proud rulers, full of that manly expostulation which made him of old tremble upon his throne. If the English people and government had hitherto considered the movements in the colonies, as the offspring of a temporary excitement, which their power would soon awe or influence into submission; there was enough in these papers alone, to dispel the illusion, and to teach them, that they had now to deal with a people cool and sagacious, who knew the value of their rights, and were prepared for every hazard in their defence. By their constituents, their proceedings were hailed with exultation and pride. At the ensuing session of 1765, they were submitted to the Assembly of Maryland by its commissioners; when after full examination, they were unanimously approved; and the speaker of the house directed, by its unanimous vote, to present its thanks to the commissioners, for their conduct in the execution of the trust reposed in them, which was done in the most flattering manner. (20)

The stamp paper had now arrived; and the governor again applying to the lower house for advice, they informed him, that Policy of the English ministry at this period. it would not be agreeable to the sentiments of their constituents, to give him any advice upon the subject; and the consequence was, that acting again under the direction of the upper house, it was ordered to be retained on board the vessel, as the only mode of securing it from destruction. (21) A more resolute course was suggested by, and would

splendor of Mr. Dulany's talents, is reputed to have said of him, "that even amongst such men as Fox, Pitt, and Sheridan, he had not found his superior."

Whatever were the errors of his course during the revolution, I have never heard them ascribed, either to opposition to the rights of America, or to a servile submission to the views of the ministry: and I have been credibly informed, that he adhered, throughout life, to the principles advanced by him in opposition to the stamp act. The conjecture may be hazarded, that had he not been thrown into collision with the leaders of the revolution in this State, by the proclamation controversy; and thus involved in discussions with them, which excited high resentment on both sides, and kept him at a distance from them until the revolution began; he would most probably have been found by their side, in support of the measures which led to it.

(20) Journals of Lower House, 27th November, 1765.

(21) Journals of Lower House, 6th November, 1765, W. II. 11th Dec'r.





have been more acceptable to, the English ministry; but if the governor's inclinations had even approved of the course suggested, he knew too well his own weakness, and the temper of the people with whom he had to deal, even to attempt the execution of the act. In a letter of the 24th Oct. 1765, addressed to him by Mr. Secretary Conway, he received instructions contemplating the use of military force even at that early period. "If (says the secretary,) by lenient and persuasive methods, you can contribute to restore that peace and tranquillity to the provinces, on which their welfare and happiness depend, you will do a most acceptable and essential service to your country. But having taken every step, which the utmost prudence and lenity can dictate, in compassion to the folly and ignorance of some misguided people, you will not, on the other hand, fail to use your utmost efforts, for the repelling all acts of outrage and violence, and to provide the maintenance of peace and good order in the province, by such a timely exertion of force as the occasion may require; for which purpose you will make the proper applications to general Gage, or lord Colville, commanders of his majesty's land and naval forces in America. For however unwillingly his majesty may consent to the execution of such powers, as may endanger the safety of a single subject; yet can he not permit his own dignity and the authority of the British legislature, to be trampled on by force and violence, and in avowed contempt of all order, duty, and decorum." (22) How tender the mercy which kindly assured the subject, that if he would but lie still and be trampled upon, he should not be dragooned into submission!!! The reply of governor Sharpe to this letter apprised the secretary, that his majesty's subjects in the colony of Maryland, preferred their own powers of defence even to his tender mercies. He assured the secretary, that although the disturbances in the province had not mounted as high as in some of the other colonies, he believed that this was owing entirely to the early and precipitate flight of the stamp distributor, and to his own prudent policy in preventing the landing of the stamp paper; and that had Mr. Hood attempted to execute his office, it would not have been in his power to protect him. "Had I





not been convinced, (says he in conclusion) that it would be impossible, without a considerable military force, to carry the act of parliament into execution here, while it was opposed so violently in the other colonies, I should have called upon Mr. Hood to execute his office, and have promised to support him in discharge of his duty; but after the proceedings of the people of New York, in the presence of general Gage and a body of his majesty's forces, I presume that nothing more could be expected from me under such circumstances, than to preserve peace and good order in the province until I could receive his majesty's instructions."

Hence it may be truly said, that the province of Maryland was never polluted, even by the attempt to execute the stamp act. All the majesty of the crown and of the parliament, was insufficient

Actual operation  
of the stamp act  
in Maryland.

to give it even a foothold in this colony. Yet although never permitted to have any direct operation, it indirectly produced, for a short time, a partial cessation of the public business, where stamps were made necessary for its transaction. Upon the commerce of the province, it appears to have had but very little operation: for in the beginning of the year 1766, the collectors generally, relying upon the impossibility of procuring stamps, were in the constant practice of granting clearances without them. (23) The county court of Frederick county, in November, 1765, had solemnly decided, that the act was unconstitutional and void, and had proceeded to the transaction of their business, without paying the least regard to its requisitions. (24) And there is reason to

(23) Green's Gazette of 30th January, 1766.

(24) This decision of the county court of Frederick, was celebrated in Frederick town, on the 30th of November, 1765, in a manner most characteristic of the times. We regret that the limits of this work will not permit us to give, at large, the very amusing description of it published in Green's Gazette of 16th December, 1765. The mode of celebration, was a funeral procession, in honor of the death of the stamp act, terminating with a ball! the persons in procession were the Sons of Liberty; the principal mourner, Zachariah Hood; and the personification of the stamp act, a coffin, with the inscription on the lid, "The stamp act, expired of a mortal stab received from the Genius of Liberty in Frederick County court, 23d November, 1765, aged 22 days."

The proceedings of some of the other counties at this period, manifest the highest indignation. At a meeting of the freemen of Talbot county, held on



believe, that this course was generally pursued in the counties. But it was otherwise as to the provincial court, and the principal state offices.

The same energy which repelled the introduction of the act, was soon elicited to correct its indirect operation in putting a stop to the public business. On the 24th February, 1766, a large number of the principal inhabitants of Baltimore county, assembled in Baltimore town, and organized themselves, as an association for the maintenance of order, and the protection of *American liberty*, under the name of the *Sons of Liberty*. Thus associated, they entered into a resolution to meet at Annapolis, on the first of March ensuing, for the purpose of compelling the officers there, to open their offices, and to transact business without stamped paper. This design was immediately communicated to the inhabitants of the neighboring counties, who were invited to co-operate in it, by the formation of similar associations. (25) The officers, at whom their resolutions were aimed, were afterwards notified, in *very polite terms*, of their intended coming, and advised to be in readiness to receive them. (26) True to their promise, on the first of March, they assembled at Annapolis in considerable number;

the 25th of November, 1765, the following amongst other resolves were entered into: "Resolved, that we will detest, abhor, and hold in the utmost contempt, all and every person or persons, who shall meanly accept of any employment or office relating to the stamp act, or shall take any shelter or advantage from the same; and all and every stamp pimp, informer or favorer of the said act; and that we will have no communication with any such persons, nor speak to them on any occasion, except it be to upbraid them with their baseness. And in testimony of this, our fixed resolution, we have this day erected a *gibbet*, twenty feet high, before the court house door, and hung in chains thereon, the effigy of a stamp informer, there to remain *in terrorem*, until the stamp act is repealed." Green's Gazette of 1st December, 1765.

(25) Green's Gazette of 6th March, 1766.

(26) One of these very polite notifications is preserved in the Council Records. It runs thus:

Sir, the shutting up of the public offices, and thereby impeding justice, being of the greatest consequence to the community, the Sons of Liberty have resolved to assemble at the city of Annapolis, on Friday, the 28th inst., in order to obtain that justice which has been so long withheld; and of this you are to take notice, and be at home to receive them. Hereof fail not, at your—  
Your obedient servants,—Sons of Liberty.





the associators of Anne Arundel and Baltimore being personally present, and those of Kent appearing by deputy. Upon their organization, it was resolved, that a written application should be preferred, to the chief justice of the provincial court, the secretary, the commissary general, and the judges of the land office, requiring them to open their respective offices on the 31st March, or earlier, if a majority of the supreme courts of the northern governments should proceed in their business before that period: and that in the event of their acceding to this request, they should receive a written indemnification, signed by the Sons of Liberty. The replies which they received, although not direct refusals, were not entirely satisfactory; and the associators, after issuing invitations to the other counties to unite with them, by forming similar associations, adjourned to meet again at Annapolis, on the day assigned to the officers, for the purpose of witnessing the issue of their application. (27) On the day appointed, they again assembled, and repaired in a body to the provincial court, to present and enforce their petition. It was at first peremptorily refused by the court; but the Sons of Liberty were not now to be denied. "It was again earnestly *insisted upon*, and *demand*ed, by the Sons of Liberty, (says the writer of that day in giving his account of that transaction) *with united hearts and voices*;" and such applications, at that period, were too well understood to be resisted. The court yielded, and passed an order in conformity to their petition; of which an attested copy was delivered to the associators. The other officers immediately acceded, without further opposition. Thus was consummated, in Maryland, the *nullification* of the stamp act. (28)

At this period the stamp act was virtually dead, throughout the whole American colonies. It had been buried alive; and the liberty pole was every where planted upon its grave. There

(27) Green's Gazette of 6th March, 1766.

(28) Green's Gazette of 3d April, 1766. The Provincial court adjourned immediately, without transacting any business. It is somewhat remarkable, that although this order was made and published in the paper of the day, no entry of it was made upon the minutes of the court. Perhaps the court did not consider that there was perfect security in the indemnification of the Sons of Liberty, and prudently resolved to have no record-evidence of their submission, *for there is no averring, saith my Lord Coke, against the verity of a record.*





Inefficacy of the  
stamp act in the  
colonies general-  
ly.

was no power in mere legislation to resuscitate it. The colonists had already set that at naught. Royal instructions and persuasions would not avail. They too had fallen lifeless. Yet in the midst of this great moral triumph of public sentiment over law, the resolves, addresses, and declarations of the colonies, abound with expressions of attachment to the government and constitution of England. Like him of old, avowing his allegiance to truth, their language was, "we love our king, we love our country, but we love our liberties better." Near as it was, they did not yet look to a state of independence. The alternatives of independence or unqualified submission, were not yet distinctly presented to their minds. They still hoped and believed, that there was no deliberate design to enslave them; and that the late measures were the projects of a temporary ministry, which would ultimately be disowned by the English nation, when the rights and feelings of the colonists were fully presented to its view, and its own interests in connexion with them dispassionately considered. In these opinions they were encouraged, by the opposition to the measures which existed in England itself, and the exhortations to constancy which they occasionally received from their friends there.

The commercial interests of England, were principally on the side of the colonies; upon the prosperity of whose commerce, their own so largely depended. (29) The anti-ministerialists in some measure espoused the same cause, which was, in their hands, not a weapon of defence for the colonies, but one of offence against the ministry. When measures are unsuccessful, they are seldom able to withstand such an opposition. A change in the ministry, to the advantage of the colonies, had taken place as early as July, 1765. The Rockingham administration then came into power, freed from the odium which attached to the Grenville ministry, for having projected this system of taxation; and although they continued to lend their aid to it, as a system established by law, which they were bound to carry into effect as far as practicable; they did not enter with

Opposition  
England.

(29) See the letters of a committee on the part of the merchants of London, to Daniel Dulany and the merchants of Maryland, of 28th February, 1766, announcing the probable repeal of the stamp act, in Green's Gazette of May 15th, 1766.



eagerness into its support, as proper to be continued and enforced upon the colonies. Their intended course as to the stamp act, appears to have been at first doubtful; but the ensuing session of Parliament presented accumulated evidences of hostility to it, sufficient to satisfy them, that military force alone could carry it into effect. The great Commoner, *Mr. Pitt*, now brought the whole force of his influence, and yet undiminished eloquence, to the side of the colonists: and the ministry prudently resolved upon a compromise.

Upon the motion of one of their members, a series of resolutions were now adopted, as *salvos* to the concession they were about to make. Some of these reprobated, in severe language, the resolves, addresses, and proceedings of the colonies, in resistance to the act; and one of them asserted, in the broadest terms, the right of the English parliament "to make laws to bind the colonies, and people of America, as subjects of Great Britain, in all cases whatsoever." The sovereignty of parliament being thus reserved *in paper* by protesting, the stamp act was fully and absolutely repealed, on the 18th of March, 1766, for the ostensible reason, "that its further continuance might be productive of consequences greatly detrimental to the commercial interests of Great Britain." The vanquished Lion of England could yet roar. The colonies, however, were content with the act of repeal; and regarded but little, the reasons in which it was wrapped, and the protestations by which it was surrounded. They knew full well, that their own energies had accomplished their deliverance; and they were but little troubled with the assertion of parliamentary supremacy, so long as it rested on mere assertion. They wore the victory, as became the cause in which it was won. It was followed by no idle exultation, to mock the power they had foiled, no menaces to provoke afresh the injuries they had escaped. The oil of kindness and joy was poured over the resentments of the past; and an indignant people, almost prepared to burst the bonds of colonial dependance, became again the willing, obedient, and grateful subjects of England. It required but kindness, and continued respect for their rights, on the part of the mother country, to have restored, in all its original freshness and vigor, their returning attachment. But the spirit of

Absolute repeal  
of the act.





arbitrary power had not yet departed from the colonial policy of England. It slept, soon to wake; and it awoke, only to consummate the liberties of the colonies. The history of its last struggle but adds another proof, that the lessons which such a spirit learns in adversity, are never remembered for its instruction.





## CHAPTER VI.

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### HISTORY FROM THE STAMP ACT TO THE REVOLUTION.

THE beginning of a design is half its accomplishment; but this proverbial truth is justly applied, only when the beginning is followed up with energy and perseverance. The first step gives no vantage ground, to the timid or irresolute; and if once retreated from, it can seldom be regained. Those who draw the sword upon the liberties of a people, jealous of their rights, and ready for resistance, must throw away the scabbard. To sheathe it in the face of their resistance, is an admission either of weakness or of apprehension, which takes away from any future attempt the power to alarm into submission. Such was found to be the result of the first and futile effort of the English parliament against the liberties of the colonies, under the cover of the stamp act. The designs of that act were in contemplation, long before its passage. It was preceded by an *advance guard* of acts and resolves, announcing its coming, and intended to test its reception in the colonies; and by a proffer to the latter of the choice of the tax, as the condition of submission. Yet its coming was hailed by no friendly voice. The colonists denied its power, and spurned its alternatives. Still the lesson was lost upon a ministry, acting as if they wished to respect the feelings of the colonies, and yet disregarding them when ascertained. The purpose was adhered to, and the act passed. It fell upon the people at whom it was aimed, only to convert their entreaties and remonstrances into defiance, and their opposition into open rebellion. Professing all due submission to the mother country, they resisted its laws; and all due respect for their sovereign, they disobeyed his commands and expelled his officers. Force, and that



too a force adequate to the entire subjugation of this free and unyielding people, was all that remained to give efficacy to the law; but the circumstances of the times concurred to prevent its exercise. A formidable opposition at home now came to the aid of colonial resistance; the arm of the English government seemed shortened that it could not save itself; and a new ministry, conforming to the temper of the period, procured the repeal of the act. The power asserted by that act, was not, however, surrendered at discretion. The right to impose the tax was still asserted, but the tax was repealed; and such an assertion of right, was like a claim to victory established by a retreat. The character of the repeal could not be disguised. It was but the interment of a law, which had already become a dead letter; and the epitaph proclaimed a motive for the repeal, which nobody believed. The act was recorded as a martyr to the commercial interests of England, whilst all knew that it had fallen before the resistance of America.

To the colonies, the triumph over this act, was more than the mere victory of the moment. It was the victory of a first effort. It was achieved over a measure adopted with deliberation, and abandoned only when the energies of the English government seemed unequal to its accomplishment.

*Influence of the stamp act controversy upon the colonies.*

It had rendered their people familiar with the extent, nature, and value of their political rights; and had given every man, a reason for the faith that was in him. It had rallied for the support of their liberties, in the very councils of the mother country, a body of English patriots, distinguished by their talents, and formidable by their power. But above all, it had revealed to them their own strength, and the means most efficient in its exercise. The French war had done much, to bring the people of the several colonies into close connection and more frequent intercourse. The stamp act effected more. It taught them to combine, as well for the protection of their liberties against tyranny, as of their territories against war. Such a combination naturally promoted amongst them, the most harmonious and unrestrained intercourse. The former apprehensions of danger from confederation were allayed; mere provincial jealousies were dispelled; conflicting customs and manners were reconciled; American liberties became the watch word; and the colonists





were already, in their own estimation, not the mere citizens of petty and distinct settlements, but members in common of the great American family. The very spectacle of an *American Congress*, assembled for the defence of American rights, dissolved half the charm of colonial dependence. Such an issue to such a controversy, was truly "*the beginning*" of the proverb to the colonies.

After the repeal of the stamp act, the affairs of Maryland remained in a state of tranquillity, evolving no incidents worthy of remembrance; until a new occasion arose, for testing the capacity of the colonies, to improve the beginning they had made in the common defence of their liberties.

Revival of the  
design to tax the  
colonies.

This occasion was soon presented, by a new system of colonial taxation, established by Parliament, in 1767. The origin of this system, as unfolded by the writers of that period, was in perfect correspondence with its policy. It sprang from a minister, who, as described by one of his ablest cotemporaries, was eminently talented and eloquent, yet vain and ostentatious of power, even to weakness; intrepid in his course, but versatile in his purposes; a devotee of generous fame, yet stooping to court applause even from the mouths of fools. Such was the man, who is said to have been goaded into the measure of American taxation, by the mere imputation of the fear of attempting it. "You dare not tax America," (said Grenville, the late minister, still clinging to the repudiated principles of the stamp act;) and *Townshend* resolved upon the tax, to repel the charge of timidity. We would expect such an origin for such a measure. It was still the mere assertion and establishment of the right to tax: and its successful issue was only to acquire for *Townshend*, ever thirsting for novelties, and ambitious of succeeding where other men had failed, the honor of having accomplished his vain-glorious boast, "that he knew how to draw a revenue from the colonies without giving them offence." He could not have selected a more unfortunate period for the experiment, nor have recommended it with a more unhappy expression.

His vaunted mode of effecting this design, consisted merely in imposing the tax, by way of a duty on articles of import. The imposition of these duties, was considered but the exercise of the





Nature and policy of the measure selected for its accomplishment.

conceded power to regulate the commerce of the colonies, and to be justified by the distinction originally drawn by the colonists themselves, between internal and external taxation. There was a period, when this insidious approach might probably have passed without scruple, or at least would not have provoked open rebellion. Oppressive as were the restrictions upon colonial trade, imposed as the preludes to the stamp act, it required the exercise of the novel power involved in the latter, to rouse into open and unbending resistance, the discontents occasioned by the former. An acknowledged right may, for a long time, cloak or protect the abuses of that right; and men will submit to oppressions practised under cover of a legitimate power, which would not for an instant be tolerated, if they sprang from the exercise of a questionable authority. The power to regulate and restrict their commerce at pleasure, was early established, and had been long exercised over the colonies. It was one under which Grenville, by adopting the system afterwards resorted to by Townshend, might possibly have sheltered in security his design of taxation. He, however, preferred the open assault by a measure, whose avowed object was revenue, and whose instrument was internal taxation. He failed; and his failure sapped even the foundations of the acknowledged power. The oppressions of the restrictive system, were mingled, in the public mind, with those of the stamp act; the power over commerce came to be considered, as a mere right to promote it by beneficial regulations, and not to impair or dry up its resources; and the distinction between internal and external taxation, was now generally regarded, as utterly unsound, when applied to justify taxation, without consent, for the mere purpose of revenue. These views were the natural result of such a controversy, as that occasioned by the stamp act; and its favorable termination seemed to have given to them the stamp of authority. Hence we find, that after the repeal of this act, in the more commercial colonies, the restrictions upon their trade were, in general, considered nearly as odious and illegal, as the system just abolished. To expect a people thus situated, fresh from discontents, flushed with victory, and yet unreconciled to existing restrictions, to sit down tamely under the power just resisted and just abandoned,



merely because it came in a new garb, betrayed either a gross ignorance of their character and sentiments, or an utter destitution of political sagacity. As if to render the expectation more preposterous, the avowed object of the author of this new scheme was *taxation for the purpose of revenue*, and the very preamble to the act declared this to be its purpose. We would scarcely suppose that even common sagacity could have expected, that a nation of intelligent freemen, after meeting and repelling the open assault, would fall into such an ambuscade. Yet it was doom; and who wonders at the conduct of the doomed?

In the face of all these considerations, the views of Townshend and the ministry were adopted; and an act of parliament was finally passed on the 2d of July, 1767, imposing the new duties on paper, Duty act of 1767 and the acts accompanying it. glass in all its varieties, tea, red and white lead, and painters' colors, as amongst the articles of most necessary consumption; the duties to take effect after the 20th of November ensuing. As if to impart to it new features of oppression, this act was accompanied to the colonies by others passed about the same period, whose objects entitled them to rank as its fellows. The Legislature of New York had dared to disobey the requisitions of the mutiny act, so far as it required them to tax themselves for the support of the stationed royal troops; and therefore, by one of these acts, it was put under the ban of the empire, and prohibited from all further legislation until this was yielded. By another, the collection of the customs was put under new regulations; and a board of commissioners was established to superintend the trade of the colonies, with powers of appointment and rights of search of a highly alarming nature.

Such combustibles were enough to kindle a flame; and they were soon followed by their probable results. Remonstrances and invectives of the most exciting character were Opposition of the colonies, and proceedings of Massachusetts. let loose upon these acts, in every quarter of the colonies, and in every form, from the lofty essays of Mr. Dickinson, to the humble pasquinade. The feeling of the country sprang up every where to meet the appeal to its energies: and the spirit of opposition was soon furnished with the expedients of resistance. The apprehensions expressed in one of the celebrated letters of Mr. Dickinson, did but speak the alarm which pervaded the whole country. "It is true, (says he)





that impositions for raising a revenue, may be hereafter called regulations of trade; but names will not change the nature of things. Indeed we ought firmly to believe, what is an undoubted truth, confirmed by the unhappy experience of many states, that unless the most watchful attention be exerted, a new servitude may be slipped upon us under the sanction of usual and respectable terms." So feared the people of the colonies generally: and so fearing, they were soon roused to measures of resistance. The colony of Massachusetts, at all times jealous of her liberties, and keenly sensible of every thing that affected her commercial interests, was again foremost in the proposition of expedients. Her Assembly being convened in January, 1768, a petition against these acts, distinguished by its ability and elevated sentiments, was addressed by it to the crown, and accompanied by letters inviting the co-operation of some of the most prominent and efficient friends of the colonies in England. But its most effectual measure was its *circular*, then addressed to the colonial Assemblies generally, detailing its own operations and inviting their concurrence.

The Assembly of Maryland was not convened after the passage of these obnoxious acts, until the 24th of May, 1768; but in this instance, as in the case of the stamp act, a spirit of indignant opposition was excited, far in advance of the Assembly transactions. From the very annunciation of these measures, the press of the colony, the Maryland Gazette, teemed with all the publications of the day, in opposition to them; and with exhortations to stand by the other colonies. The public sentiment in Maryland, was already matured: and the Massachusetts circular received a prompt and cordial welcome from its Assembly. That circular, as the signal of colonial concert, and the precursor of another American Congress, struck terror to the hearts of the British ministry; who hitherto seemed to have rested in security, under the unaccountable belief, that the colonies would not again fly to the union, by which they had accomplished their former deliverance. That delusion was now dissipated, but it was succeeded by another equally as singular. They fancied, that their menaces had power to prevent the colonies from listening to the appeals of that circular: and

Attempts to enlist the Assembly of Maryland against the designs of the Massachusetts Circular.





in the very injunctions intended to produce that effect, they characterised it by terms of denunciation, sufficient to have ensured it a favorable reception even with the most careless and the least excited. The very dread of concert manifested by the ministry, was enough to indicate to the colonists, that in it lay their hopes of safety. In the circular of 21st April, 1768, addressed by the Earl of Hillsborough, the English Secretary of State, to Sharpe, governor of Maryland, (which corresponds in its tenor with those addressed to the governors of the other colonies,) the Massachusetts letter was depicted "as one deemed, by his majesty, to be of a most dangerous and factious tendency, calculated to inflame the minds of his majesty's good subjects in the colonies, to promote an unwarrantable combination, to excite and encourage an open opposition to, and denial of, the authority of parliament, and to subvert the true principles of the constitution:" and the governor was instructed to exert himself to the utmost, in the endeavor to frustrate its designs. If, however, his majesty's great confidence in his subjects of Maryland should prove to be misplaced, and the Assembly should manifest any disposition to give countenance to the proceedings of Massachusetts, he was directed to cut short its inclinations by its immediate prorogation or dissolution, upon the empirical notion, that to close the ordinary orifice of a sore was to heal it. The message of Governor Sharpe was the mere echo of these injunctions: (1) and the admirable reply of the lower house their countercheck.

"In answer to your Excellency's message, (says that reply,) we must observe, that if the letter from the speaker of the House of Representatives of the colony of Massachusetts, be the same with the letter, a copy of which, you are pleased to intimate, hath been communicated to the king's ministers; it is very alarming to find, at a time when the people of America think themselves aggrieved by the late acts of parliament imposing taxes on them, for the sole and express purpose of raising a revenue, and in the most dutiful manner are seeking redress from the throne, any endeavors to unite in laying before the throne, what is apprehended to be their just com-

Message of the  
Lower House eli-  
cited by these at-  
tempts.

(1) Journals of House of Delegates of 25th June, 1768.



plaint, should be looked upon 'as a measure of most dangerous and factious tendency, calculated to inflame the minds of his majesty's subjects in the colonies, to promote an unwarrantable combination, to excite and encourage an open opposition to, and denial of, the authority of parliament, and to subvert the true principles of the constitution.' We cannot but view this as an attempt, in some of his majesty's ministers, to suppress all communication of sentiments between the colonies, and to prevent the united supplications of America from reaching the royal ear. We hope, the conduct of this house will ever evince their reverence and respect for the laws, and faithful attachment to the constitution: but we cannot be brought to resent an exertion of the most undoubted right of petitioning the throne, or any endeavor to procure and preserve an union of the colonies, as an unjustifiable attempt to revive those distractions, which, it is said, have operated so fatally to the prejudice of both the colonies and the mother country. We have the warmest and most affectionate attachment to our most gracious sovereign, and shall ever pay the readiest and most respectful regard to the just and constitutional power of the British Parliament: but we shall not be intimidated by a few high-sounding expressions, from doing what we think is right. The House of Representatives of the colony of Massachusetts, in their letter to us, have intimated, that they have preferred an humble and loyal petition to the king, and expressed their confidence, that the united and dutiful supplications of his distressed American subjects will meet with his royal and favorable acceptance, and we think they have asserted their rights, with a decent respect for their sovereign, and a due submission to the authority of parliament. What we shall do upon this occasion, or whether in consequence of that letter we shall do any thing, it is not our present business to communicate to your excellency: but of this be pleased to be assured, that we cannot be prevailed upon, to take no notice of, or to treat with the least degree of contempt; a letter so expressive of duty and loyalty to the sovereign, and so replete with just principles of liberty: and your excellency may depend, that whenever we apprehend the rights of the people to be affected, we shall not fail boldly to assert, and shall steadily endeavor to maintain and support them, always remembering what we could wish never to





be forgot, that by the bill of rights it is declared, 'that it is the right of the subject to petition the king, and all commitments and prosecutions for such petitioning are illegal.' " (2)

Aware of the general injunction of the crown to the colonial governors, to prorogue or dissolve their Assemblies, if they manifested any inclination to second the designs of the Massachusetts circular, the lower house had taken care to perfect all their purposes, before they returned this caustic reply. That circular was brought under the consideration of that house, as early as the 8th of June, 1768: and a committee was then appointed, consisting of gentlemen distinguished for their abilities and attachment to the cause of the colonies, to draft a petition to the king, remonstrating against the late impositions. (3) Before the report of that committee had been received, the message of the governor above alluded to, was thrown in upon the house, as if for the purpose of checking their proceedings: but the latter discreetly delayed their reply, until their purposes were accomplished. Having perfected their petition to the king, and adopted a series of resolves declaratory of their rights, their reply to the message of the governor was now submitted, adopted, and borne to him by the speaker, attended by the whole house. The governor was at the same time informed, that they were ready for adjournment; and the Assembly was accordingly prorogued: but the transactions of the lower house were so well timed, that the prorogation seemed to have proceeded from their own request. (4)

The transactions of this house, at this session, in opposition to the new system of taxation, were characterised by the same unanimity which marked the proceedings of the Assembly in resistance to the stamp act; and their memorials, in vindication of their liberties,

Character of these proceedings.

(2) Journal of House of Delegates of 22d June, 1768. This message of the lower house was submitted by Thomas Johnson, then a delegate from Anne Arundel, and afterwards the first governor of Maryland under the state government.

(3) This committee consisted of William Murdock of Prince George's, Thomas Johnson of Anne Arundel, Thomas Ringgold of Kent, John Hall of Anne Arundel, James Holyday of Queen Anne's, Mathew Tilghman of Talbot, and Thomas Jennings of Frederick.

(4) Journals of House of Delegates, 8th, 20th, 21st, and 22d June, 1768.





are at once firm and temperate, fearless and dignified. Their resolves assert, as the exclusive right of the Assembly, the power to impose taxes, and to regulate the internal polity of the colony; and denounce as unconstitutional all taxes or impositions proceeding from any other authority. Their petition to the king may safely challenge a comparison with any similar paper of that period, as an eloquent and affecting appeal to the justice of the crown. Deducing their claim to relief from their acknowledged rights as British subjects, and the peculiar exemptions of their charter, they press it upon the crown in the following manly and dignified language:

"Our ancestors firmly relying on the royal promise, and upon these plain and express declarations of their inherent, natural, and constitutional rights, at the hazard of their lives and fortunes, transported themselves and families to this country, then scarcely known, and inhabited only by savages. The prospect of a full and peaceable enjoyment of their liberties and properties, softened their toils, and strengthened them to overcome innumerable difficulties. Heaven prospered their endeavors, and has given to your majesty a considerable increase of faithful subjects, improved the trade, and added riches to the mother country.

"Thus happy in the enjoyment of the rights and privileges of natural born subjects, have they and their posterity lived, and been treated as freemen, and thus hath the great fundamental principle of the constitution, that no man shall be taxed, but with his own consent, given by himself, or by his representative, been ever extended, and preserved inviolate in this remote part of your majesty's dominion, until questioned lately by your parliament.

"It is therefore with the deepest sorrow, may it please your most excellent majesty, that we now approach the throne, on behalf of your faithful subjects of this province, with all humility, to represent to your majesty, that by several statutes, lately enacted in the parliament of Great Britain, by which sundry rates and duties are to be raised and collected within your majesty's colonies in America, for the sole and express purpose of raising a revenue, this great fundamental principle of the constitution is in our apprehension infringed.



"The people of this province, royal sire, are not in any manner, nor can they ever possibly be, effectually represented in the British parliament. While, therefore, your majesty's commons of Great Britain continue to give and grant the property of the people in America, your faithful subjects of this, and every other colony, must be deprived of that most invaluable privilege, the power of granting their own money, and of every opportunity of manifesting, by cheerful aids, their attachment to their king, and zeal for his service; they must be cut off from all intercourse with their sovereign, and expect not to hear of the royal approbation; they must submit to the power of the commons of Great Britain; and, precluded the blessings, shall scarcely retain the name of freedom."

This petition, as well as those of the other colonies at this period, speak the language of men, who hoped success for their appeals, and trusted to them for relief. Yet such an inference would be erroneous. The recent measures of the English ministry were sufficient to satisfy the most incredulous, that such expectations were delusions. These remonstrances looked to a different purpose. They were the mere cautionary measures of a people, determined to be in the right, and to make the rejection of their entreaties a justification for resistance. The alarm of slaves leads to submission; the apprehensions of the freeman do but arouse his energies and nerve his spirit. The menaces of the English ministry, falling upon such a people as the Americans, were the mere signals for resistance; and the colonies now betook themselves to a mode of opposition, less questionable and dangerous than open rebellion, but far more effectual than mere supplications. They had discovered in their opposition to the stamp act, that the most irresistible appeal to the feelings of a tyrannical government is that which reaches them through its interests; and that the English people were always sensitive and vulnerable, to every measure operating injuriously upon their commerce. This was "*the undipped heel*," which no armor of laws could protect. During that controversy, the colonists had partially adopted a *non-importation* system, which was followed by the happiest results. It brought to the side of America the great body of English merchants interested in her trade, who felt the attack upon her liber-

Non-importation  
Association.





ties as an attack upon their own fortunes. The history of that struggle leads us to the conclusion, that without the co-operation of the interested merchants, the efforts of the English patriots in parliament, for the protection of the colonies, would in all probability have proved ineffectual. The time had again arrived for the appeal to the pocket nerve; and it was now more appropriate, because besides its indirect consequences, it gave the colonies power to withdraw themselves peaceably from the operation of the new impositions, by declining the consumption of the articles upon which they were laid. A non-importation system had not only the effect of repelling the approach of taxation; but it also compelled them to that most effectual safeguard of their independence, dependence on themselves and their own resources. It made them manufacturers by necessity; and the habit once introduced, the recurrence to it became more easy in any future emergency. Thus recommended by its present and ultimate results, the difficulties of the present crisis soon suggested a return to this system.

The proposition to revive it at this period, originated with one of the political clubs of Boston; and, as early as October, 1767, it received the sanction of a public meeting in that city, over which the distinguished James Otis presided as moderator. For reasons which it is not necessary to detail, it did not then enlist the concurrence of the other cities, and was soon abandoned by the Bostonians themselves. (5) But if then premature, it was now the last peaceable resort. Remonstrances had failed; and petitions were called factions. The proposition was therefore revived in April, 1768; and letters were then addressed by several merchants of Boston and New York to the merchants of Philadelphia, soliciting their concurrence in its adoption. By the latter, it was declined as still premature; but the design was not therefore abandoned. On the 1st of August, 1768, a non-importation association was formed in Boston, which was followed, in the course of that month, by similar associations in New York and Connecticut. The measure was not, however, generally adopted, until the ensuing session of parliament had dispelled all hopes of relief from

(5) 1st Gordon, 148. Green's Gazette of 19th November, 1767.





the justice of England. Abandoning their scruples upon the results of that session, the merchants of Philadelphia acceded to the association in April, 1769; and their accession was immediately followed by that of Maryland and Virginia. (6)

In Maryland, there had been previously several *county* associations of this description; but it was now deemed necessary, to give them a more imposing character and effective operation. At the solicitation of many gentlemen of the different counties, a circular was therefore addressed, on the 9th of May, 1769, by Messrs. Dick and Stewart, M'Cubbin, Wallace, and W. Stewart, merchants of Annapolis, to the people of the several counties, inviting a general meeting of the merchants and others at that place, "for the purpose of consulting on the most effectual means of promoting frugality, and lessening the future importation of goods from Great Britain." The meeting was accordingly held on the 20th June, 1769; and was very fully attended. A non-importation association was then established by that meeting, for the whole province; which was similar, in its general character and objects, to those of the other colonies. It contained a general engagement, that the associators would not directly nor indirectly import, nor be concerned in the importation of, any species of merchandise, which then was, or might thereafter be, taxed by parliament, for the purpose of raising a revenue in America, except where orders for the import had already been given; and that they would consider such taxation as an absolute prohibition of the article taxed: and also an agreement not to import a great variety of other enumerated articles, which were to be excluded as luxuries or superfluities. The association was formed upon the principle of excluding every thing not actually necessary to subsistence, and of thus assailing vitally the whole commerce of England with the colonies. It forbade also the purchase of any of the prohibited articles, even if imported by others: and was sustained by a moral sanction, carrying with it, at that period, more efficacy than even the penalties of ordinary legislation. All persons contravening the objects of the association, were to be denounced as enemies

(6) Gordon, 163 and 168. Green's Gazette of 22d September, 1768, and 25th May, 1769.



of the liberties of America, and to be held up to public view, for reprobation and contempt: and to bring every person within its operation, twelve copies of it were printed for and transmitted to each county for general signature. (7) This association was sustained in vigorous operation, by the same machinery employed to render efficient the similar associations of the other colonies. It was under the care of the whole body of associators, and the particular supervision of special committees, appointed by the associators of each county, and charged with the duty of inquiring into, and reporting the facts, of every case of actual or suspected violation of the agreement. During its existence, several of such cases arose in Maryland, from the proceedings connected with which we learn, that the association was for a long time kept up with great vigor and unanimity (8) Certain it is, that there was no colony, in which the objects of the system were adhered to with more faithfulness, or infractions of it hunted up and pursued with more rigor.

The association was scarcely adopted in Maryland, before the spirit, which had prompted a resort to it, began to flag in some of the other colonies: and in the course of the year 1769, various causes concurred yet further to abate it. In May of that year, a circular was addressed to the colonies, by Lord Hillsborough, still Secretary of State, which gave to them the assurance that the ministry had no design of proposing any further taxes upon America for the purpose of raising revenue: and that it was their intention, at the next session of parliament, to propose a repeal of the duties on glass, paper, and colors, because imposed contrary to the true principles of commerce. (9) The cupidity of some of the merchants seized upon this assurance, as a pretext for relaxing the restrictions upon importation. Evasions of them became more frequent: and jealousies soon sprang up amongst

(7) Green's Gazette of 11th May, and 29th June, 1769, the last of which numbers publishes the articles of association at large.

(8) Green's Gazette of 28th Sept. and 28th Dec. 1769; 15th Feb. 1st of March, 19th and 26th of April, 3d, 24th, and 31st May, 12th, and 26th of July, and 2d, 9th, and 23d August, 1770.

(9) See Mr. Burke's comments upon this circular, in his celebrated speech upon American taxation. 1st Burke's works, 445.





the merchants of the principal cities, to excite the apprehension, that by their strict adherence to them, they were only throwing the profits of their trade into the hands of less scrupulous rivals.

Agreeably to the assurances of Hillsborough, and upon the motion of the ministry, the duties alluded to in the circular were finally repealed on the 12th of April, 1770: but the

General seces-  
sion from in  
1770.

duty upon tea was still retained, as a pepper-corn rent, (as another has justly remarked,) to denote the tenure by which the colonies held their rights. Before this repeal, several of the New York merchants had seized upon the promise of it, and the mutual distrusts of the cities as to the strict observance of the system, to sanction a proposition to abandon the latter, so far as it prohibited the importation of articles not subject to duties imposed for revenue. The proposition was resisted elsewhere, as an abandonment of the principles of the association: but it was, nevertheless, finally adopted by a large body of the New York merchants, in July, 1770. The defection of the New Yorkers now concurred with the repeal, to render impracticable the effectual maintenance of the general system. Their secession was accompanied by the protest of many of their fellow citizens, and was followed by the severest reprehensions of the sister colonies: but it soon produced results fatal to the system. That unanimity and cordiality, which had hitherto been its principal support, were now withdrawn: and the other cities found it ruinous to adhere to an agreement, sustained to their prejudice only. The example of New York was followed, in September, by the partial secession of the merchants of Philadelphia: and the latter, by the general secession of the Bostonians in the ensuing month.

In Maryland, the defection of the New Yorkers was at first received with general indignation: and by many of the county associations, the seceders were denounced as enemies of their country, with whom they would no longer hold any correspondence. Yet who can fetter the spirit of which one has said, "Its leger is its bible, and its gold its god?" The examples of other cities opened the door to escape: and the opportunity was first embraced at a





meeting of several of the merchants of Baltimore, on the 5th of October, 1770. The resolves of that meeting solicited a general convention, for the purpose of determining upon the expediency of rescinding the association, so far as it related to articles not taxed, and avowed the determination to secede from it to that extent, if such convention were not held. Under these resolves, a general meeting was held at Annapolis, on the 25th of October, at which were present, the committees from several counties, a large majority of the representatives in Assembly, some members of the council, and many other persons from various parts of the province. The sentiments of that meeting were entirely adverse to the proposition from Baltimore. They not only resolved to adhere to the prohibitions of the original association, but they also denounced, in the harshest terms, the merchants of Baltimore proposing the secession, and avowed their determination to hold no commerce with them, in the event of their withdrawal. (10) From the tenor of these resolves it seems manifest, that the general sentiment of the colony was in favor of adherence to the original restrictions of the system: but all hopes of sustaining these, were extinguished by the course of the Bostonians. The three great marts of America had now cast them off: and their further support in Maryland, was useless and impracticable. The records of that day do not inform us, at what period they were generally abandoned in this colony: but they furnish no evidence of any efforts to sustain them after they were abandoned in Massachusetts.

The controversy with the mother country thus mitigated, was now to be displaced by internal dissensions of a more engrossing and exciting character. In their resistance to the impositions of parliament, the people of Maryland had hitherto been struggling for the preservation of an abstract principle of liberty, in opposition to their immediate wants and interests. The *quantum* of these impositions had not even been considered: and they were too limited, both as to their direct objects and their amount, to have produced actual distress by their mere operation. Their oppression consisted, not in the payment of the tax, but in the assertion and

Proclamation  
and vestry act  
question.

(10) Green's Gazette of 11th October and 1st November, 1770.



establishment of the parliamentary right of taxation. This was one of the remarkable features of that controversy, evincing, more than any other, the general prevalence of rational liberty, and the sagacity of the American people in guarding its outposts. Men must be thoroughly imbued with principles, familiar with their operation, and endowed with intelligence to estimate the danger of remote encroachments upon them, before they will enter into a contest for them, prompted by no actual suffering. Other nations have risen, in the agony of distress, to shake off oppression: the American people stood erect and vigilant, to repel its approach. The internal administration of Maryland now brought up a controversy, in which its people were to renew their combat for the principle they had been sustaining against England, under circumstances bringing it nearer to their immediate interests. The advances upon their rights, now came in the shape of actual oppression, extending its operation to every citizen. This controversy related to what were familiarly called "*the proclamation and the vestry act questions.*" From this period until the commencement of the revolution, all other subjects gave place to these engrossing topics. They elicited more feeling, and greater displays of talent and research, than any other question of internal polity, which had ever agitated the colony. The published discussions of them, which are preserved to us, would fill volumes. They have long since lost their intrinsic interest: but their general nature and objects are still worthy of remembrance, not only as illustrative of the government and character of the people of Maryland at that day, but also for their connexion with the history of some of her most distinguished citizens, whose names yet live to shed a lustre upon the land that gave them birth. Without fatiguing the reader, by spreading before him the many legislative and other documents, relative to the protracted controversy, which grew out of these questions, we shall confine our remarks to its general causes and results.

It has already been remarked, that the General Assembly of Maryland always retained its control over the officers of the province, by its right to regulate their compensation for official services: and that the fees of office were not only prescribed by law, but also determined by

Circumstances  
which gave rise  
to the Proclama-  
tion.





temporary acts of short duration, upon the expiration of which the Assembly could withhold or reduce them at pleasure. One of these acts, passed in the year 1763, had been continued, from time to time, until October, 1770: and came up again for renewal at the session of September, 1770. The system of official compensation established by that act, was that which had prevailed in the colony from a very early period. There were no salaries: but the officers were allowed definite fees for each act of service. These fees, as well as the public dues and the taxes for the support of the established clergy, were sent out every year to the sheriffs of the counties for collection. A particular period in each year was assigned, within which the lists of fees were to be delivered to the sheriff, and by him to the party charged for voluntary payment. If that period was suffered to elapse, the sheriff was required to levy them by process of execution, and to account for them to the officers within another assigned period. Such were the general features of this system of collection, which we shall have occasion to examine more particularly hereafter. To the details of the act of 1763, now coming up for re-enactment, many objections were made by the lower house: but so far as they related to the essential parts of the controversy about *officers' fees* alone, they consisted in the exorbitance of the fees attached to some of the principal offices, the abuses in the mode of charging, and the want of a proper system of commutation. The principal complaints about the exorbitance of the fees, related to those of the provincial secretary, the commissary general, and the judges of the land office: and from the reports of that period, which enable us to ascertain the average annual receipts of those offices for several antecedent years, these complaints appear to have been justly founded. (11) The alleged abuses

(11) By many of our citizens, the fees and salaries of the state offices, at the present period, are considered excessive. Yet there is no office in the State, whose emoluments can be considered equal to those of any one of the above mentioned offices, during the pendency of this controversy. The receipts of the secretary's office, for the seven successive years, from 1763 to 1769 inclusive, were 1,562,862 lbs. of tobacco: and the average annual receipts 223,266 lbs. of tobacco. The annual average value of his fees in the Chancery Court during the same period was 39,326 lbs. of tobacco. His annual receipts from these two sources was therefore 262,592 lbs. of tobacco; or,





arose principally from a practice, not peculiar to that day, of dividing one service into several other enumerated services, with a view to the several fees. The commutation privilege of the act of 1763, was objected to, as not sufficiently extensive. Tobacco was still the currency of the province. Officers' fees, and all public dues, were rated in it: and the right to pay these in tobacco, was, at first, considered a high privilege. To avoid the fluctuations in value, to which such a currency was necessarily subject, it obtained by law, a fixed specie value; and in certain cases, the specie was made receivable, in lieu of it, at the rate so fixed. The right to pay in specie, the lower house now desired to extend to all persons within the period allowed for voluntary payment. Although several of the propositions, growing out of these objections, were at first resisted by the upper house, it seems probable from the tenor of its messages, that it would ultimately have yielded to all but that to reduce the fees. Here, however, was a source of invincible disagreement between the two houses: and unfortunately for the opposition of the upper, it was conducted by those directly interested against the reduction. Daniel Dulany, the provincial secretary, Walter Dulany, the commissary general, and Benedict Calvert and George Steuart, the judges and registers of the land office, were all councillors, and of course members of the upper house. Their opposition was therefore regarded, as that of their own private interests to the general welfare: and all attempts at compromise proved ineffectual. After much angry discussion, the Assembly was at length prorogued: and the province was left not only without any legal regulation of officers' fees, but also without any public system for the inspection of tobacco, with which the former had for many years been connected.

In this emergency, *Governor Eden* resolved upon the expedient of regulating the fees, under the prerogatives of his office; and accordingly issued his proclamation for that purpose, on the 26th of November, 1770. Its avowed object was the prevention of abuses and extortion on the

The Proclamation: its object and expedience.

according to the rate of commutation at that day, 4,376 dollars. The fees of the land office, during the same period, yielded 2,850,934 lbs. of tobacco, or annually, on an average, 407,276 lbs. or 6,876 dollars; and those of the commissary's office, annually, 235,428 lbs. of tobacco, or 3,923 dollars.



part of the officers: and to effect this professed purpose, it re-established the fee bill of 1763, and required the officers to receive their fees in money, at the rate of commutation fixed by it, if tendered at the time of service. The occasion was unfortunate: the measure most unadvised. There never was a period in the history of Maryland, when her people would have fully acquiesced in such an exercise of power. It was not, however, entirely novel; but so far as the opinions and usage of the colony were to be consulted, the weight even of early precedent was decidedly against it; and, in the general opinion, there was no charter power under which it could be sheltered. In the present instance, it defeated all the purposes of the lower house, by adopting the very system which they had refused to sanction. It was, therefore, in general estimation, a measure of arbitrary prerogative, usurping the very right of taxation which the colony had been so long defending against the usurpations of parliament. If the governor had doubted about the reception of such a measure, there was enough to warn him, in some of the transactions of the Assembly, immediately before its adjournment. Whilst the fee bill was under discussion, and after the expiration of the law of 1763, the judges of the land office, treating that office as the private institution of the proprietary, instructed their clerk to charge and secure the fees agreeably to the provisions of the expired law. A case, in which these instructions were pursued, was immediately brought to the notice of the lower house; by whose order, the clerk was taken into custody and committed to prison. To effect his release, the governor prorogued the Assembly for a few days. This interference elicited from the lower house, upon its re-assembly, an angry remonstrance, containing an expression of public sentiment not to be misunderstood. "The proprietor (they remark,) has no right, either by himself, or with the advice of his council, to establish or regulate the fees of office; and could we persuade ourselves, that you could possibly entertain a different opinion, we should be bold to tell your excellency, that the people of this province ever will oppose the usurpation of such right." In venturing upon such a power, after such an admonition, the governor therefore sinned against light and knowledge; and his measure shared the usual fate of





those which set at naught the opinions, and sport with the liberties of a free and intelligent people.

This earnest of opposition was soon redeemed. From the first appearance of the proclamation, it aroused, in hostility to it, the great body of the people; with a spirit not to be seduced from resistance, by the influence of talents, the menaces of power, or the soothings of official patronage. Never was a measure of internal polity more thoroughly investigated and discussed. Parties were formed upon it, and drew to their aid every man of influence and abilities in the province. The arrangement of these parties may be deemed singular; yet it was similar to that which generally prevailed, not only in this province, but also in the other colonies, whenever parties were formed upon questions of political liberty. The governor and his courtiers, the officers and their adherents, and the established clergy, were arrayed against the great body of the people, sustained and led on in opposition by the great body of the lawyers.

The fashion of the day is against the ascription, to the latter profession, of purposes and interests, compatible, and naturally associated with those of the people at large. Pointed at as a privileged order, for the pursuit of a profession which generally rewards laborious talent with fame and fortune; and as the hired advocates of right or wrong, because they stand by the landmarks of the law, to give certainty to justice, and to throw over every man its protection, which, falling like the rain from heaven upon the just and the unjust, if it sometimes shelter the guilty, is yet the security of the innocent: it is oft the humor of the times to involve them with the better sex in the common censure,—“there is no living with them, nor without them.” Yet this profession is the natural ally of liberty. Its pursuits habituate the mind to respect for the authority of the law, in opposition to prerogative, whether it come in the form of judicial constructions, or in the dispensations of arbitrary power. They form habits of inquiry and research, favorable to the investigation of the principles of government. They inspire independence, and a firm adherence to opinions, by the very habit of opposition which they compel. By their constant re-





quisitions upon the faculties of the mind, they "fit them for ornament, and whet for use." They throw their followers into frequent association with the people at large, acquaint them with their feelings and interests, and lead them to observe their peculiarities; and by being thus drawn near to them, if they become conversant with their vices, they also learn to respect their rights and feelings, and to estimate their virtues. Servility and venality have sometimes prostituted the capacities of such a profession; but its abuses are no argument against its proper and natural use. In the experience of the colonies it was always found, that when this did occur, the cause of the people always drew to it, from the integrity and talents of that profession, an antidote more than sufficient to counteract its influence. These remarks are prompted by a sense of justice to a body of men, so distinguished, at every period of our colonial history, for their firm and fearless support of the constitutional liberties of the people; and if it be objected, that they spring from one identified with them by his pursuits, let it be remembered that if history awards the eulogium, it matters not by whom it is pronounced. In the histories of other colonies, it has already been recorded: in that of this province, it lies prominent in every great controversy which agitated it. It has been seen, that in the long protracted differences with the proprietary about the extension of the English statutes, and in the more recent and dangerous opposition to the stamp act, this class of citizens were active and efficient on the side of liberty. In the controversy of which we are now speaking, their agency was so remarkable, as to have brought down upon them and their profession, all the indignation, invective, and raillery of the government party. In looking through the many anonymous publications of that day, on behalf of this party, we are struck with the virulence of their attacks upon the lawyers, to whose factious spirit, as they styled it, they ascribed the indignation of the people against the proclamation; and with their constant endeavors, in a cant not peculiar to that day, to excite against them the jealousies of the people. In one of these publications, which is a fair specimen of the rest, the writer remarks, "Whence, in your legislative capacity, all this clamor about the officers and clergy, and not a word about the lawyers, a set of men more truly expensive and bur-



densome to Maryland, than perhaps all the other orders of the community put together. Is not this, as a shrewd planter has remarked, to spare the blackbirds and kill the crows." (12) But all these efforts to sow the seeds of discord by such invidious reflections, were lost upon men, too sagacious to reject their adherents upon the advice of their adversaries.

There were, however, on this occasion, two prominent exceptions to their general course, which strikingly illustrate the feebleness of fame and talents, when employed, either to the defender of the proclamation divert the public sentiment from what it deems the unquestionable rights of the citizen, or by the sanction of an imposing name, to give a tone to the opinions of this profession. The name of Daniel Dulany is already familiar to the reader. It has been associated with recollections of our history, as honorable to his country as to himself. By his able vindication of colonial liberties, "he had gathered golden opinions from all sorts of men;" and with the most commanding abilities to retain the reputation he had acquired, he stood proudly pre-eminent in the province, at the commencement of this controversy, in all that gave rank and influence. Heretofore distinguished as the champion of the colony against the tyranny of an irresponsible legislation; in an evil hour he now became the defender of an exercise of prerogative, minor in its objects, but leading to the same mischievous results. He was, at this period, and had been for several preceding years, a member of the upper house, and the secretary of the province. The office of commissary-general was held by his relative. The reduction of the fees of these offices was one of the prominent objects of the lower house, in its recent difference with the upper; and in the discussions connected with that difference, Mr. Dulany was the prominent partisan of the upper house. His talents were supposed to control every cause in which they were enlisted; and hence he was, by many, charged with having induced, by his persuasions, the issuing of the proclamation. This he always vehemently denied, with the most solemn assurances, that it was the unbiassed act of the governor, which had received the approbation of the whole council; and the proceedings of that period certainly manifest

(12) Green's Gazette of 27th June, 1771.





the most hearty concurrence of the whole executive in its support. By the force of these circumstances, he was identified with the measure; and with a character too decided for neutrality, and an intellect that never feared the grapple of argument, he did not hesitate to avow, in the face of opposition, that, in his opinion, it was both legal and expedient.

For the first two years after the origin of the controversy, it was principally conducted by the discussions between the two houses

Controversy upon this subject, between Dulany and Charles Carroll, of Carrollton.

of Assembly, and by oral appeals to the people. At the close of that period, it found its way to the press; and then began a war of essays, as fierce as the war of words which preceded it. It was opened, in the

beginning of the year 1773, by a communication purporting to be a dialogue between two citizens, in which "*The First Citizen*" was the opponent of the proclamation: but the whole dialogue was so adroitly managed on the part of his adversary, with so many moderate and seemingly candid arguments, and so many gentle insinuations against the motives and consistency of the leaders of the opposition, that its purpose could not be mistaken. Another writer now assumed the name of "*the First Citizen*," to carry on the dialogue with more justice to the opposition; and Mr. Dulany appeared as his antagonist, and the defender of the proclamation, under the new name of "*Antilon*." In "*The First Citizen*," Mr. Dulany encountered, as his opponent, Charles Carroll of Carrollton, the living signer of the declaration of independence. Mr. Carroll is the descendant of a family established in the colony before the Protestant revolution. Charles Carroll, his grandfather, emigrated to Maryland shortly before the accession of William of Orange; where, during the continuance of the royal government, he rose so high in the confidence of the proprietary, as to receive from him, about the year 1711, the lucrative and responsible office of Agent and Receiver General of his revenue. To his son, Charles Carroll, he transmitted an ample inheritance, and an honorable name, by the improvement of which the former acquired a commanding respect and influence with his Catholic brethren of the colony. Carroll of Carrollton, who, like Nestor, has lived to see successive generations pass by him to the tomb, was born in Maryland about the year 1737. Blessed with a father, whose will concurred with his for-





tunes, to bestow upon him advantages in education enjoyed by few in this colony at that early day, he received his collegiate instruction in the most approved schools of France, and his legal education in the Temple at London. From the latter, he returned to his native province in 1764; and although his religious persuasions excluded him from its councils, he is said to have participated in the common feeling of indignation against the stamp act, and to have contributed by his writings to the opposition to the more subtle, but not less dangerous taxation of commerce. This, however, was the first occasion on which he was brought conspicuously into view, in the public transactions; and he had now to deal with an able and experienced adversary, with whom victory was familiar, and from whom defeat was not disgrace. Mr. Dulany was his equal in education; his superior in age, experience, and established reputation; more conversant with the various interests and institutions of the colony; more skilled in the profound researches and practical applications of his profession; and to give these advantages still greater force, he was a Protestant, and amongst the first in office and confidence under an exclusive Protestant government, and amongst a Protestant people. Mr. Carroll was a disfranchised Catholic, who, to the joint power of such weapons of attack, could oppose only the force of his cause, the resolute spirit, and the acquirements of a cultivated mind; yet with such odds against him, he entered into the contest.

Thus began a controversy, which was conducted through the Maryland Gazette, under these assumed names, for several months. It was kept up with great spirit: but it may be fairly  
 Character of their essays. objected to the essays of both, that they deal too much in invective. It is manifest from the allusions of each, that he fully understood with whom he was combating; and hence the discussion abounds in personalities, some of which are now unintelligible, and all deserve to be forgotten with the feeling of the moment. Their essays are, also, crowded with quotations and classical allusions, which would almost ascribe to them a contest for the palm in learning, rather than the argument of a question of common interest, addressed to the general understanding, were it not, that they are explained or translated, (as Mr. Sheridan would say,) for the benefit of the country gen-



clermen. Yet, with these defects, if the latter may be so called, they are political essays of a high order, taking a wide range through the doctrines of constitutional liberty, evincing much research, abounding in happy illustrations, and often pointed with the most caustic satire. In those of Mr. Dulany, we discover every where the traces of a powerful mind, confident in its own resources, indignant at opposition, contemptuous as if from conscious superiority, and yet sometimes affecting contempt as the cover under which to escape from principles not to be resisted. In those of Mr. Carroll, Mr. Dulany is constantly covered with the character of the prime minister of the governor, prompting the measure in controversy, for his personal interest and aggrandizement at the expense of the people. Availing themselves of Mr. Dulany's position in contrast with his previous opposition to the stamp act, they array against him all the dangers of prerogative, as illustrated by the examples of history, and depicted in his own previous writings: and they speak every where the language of one, confident in his cause, conscious that he is sustained by public sentiment, and exulting in the advantages of his own position. On behalf of the proclamation, it was contended by *Mr. Dulany*, that it was not the assumption of a power claiming to control *law* in the regulation of fees, but merely acting where the law had ceased to operate, and enduring only until it resumed its operation; that it was not therefore in conflict with the exercise of a similar power by the Assembly, but in subordination to it, and was in no degree impugned by the doctrines and precedents of past Assemblies, claiming it as the proper power of legislation; that it was sanctioned by several instances of its past exercise, and was now necessary to restrain official abuses, where the laws interposed no check; that it was intended and operated for public benefit, and was therefore distinguished from exercises of dangerous prerogative; that the mere regulation of the fees of previously established offices, was not taxation; and that in England, where the taxing power was as exclusively in parliament, as here in the Assembly, the fees incident to such offices were rated by the courts without objection. To these arguments, it was replied by *Mr. Carroll*, that fees were taxes, both in legal parlance and according to the common acceptance; that they were so considered by the most approved legal writers,





and were such in their nature and operation; that the regulation of fees by the English courts was not their establishment, but the mere ascertainment of them as previously and legally established, in contradistinction to those which had crept in by abuse; that being a branch of the taxing power, it was equally open to abuse with any other branch of it, and equally required the safeguard consisting in the exclusive exercise of it by the legislature; that precedents, and especially precedents disputed at the time of their establishment, were of no avail against an exclusive right so sacred and necessary; that the precedents in this instance, were in opposition to the power, and not only demonstrated an utmost uninterrupted exercise of it by the Assembly, but also an express surrender of it by the governors, at a very early period; and that the proclamation had not only exercised an exclusive power of the legislature, but had also usurped it against its will, and in the face of its remonstrances. These are but the faint outlines of these elaborate essays, so distinguished at that period, so little known at this. (13)

The efforts of Mr. Carroll, drew upon him several malignant but anonymous attacks, from other quarters, in which the effort was made to array against him the religious prejudices of the province. He was stigmatised as a Catholic and a Jesuit, and reproached with his political disfranchisement, as if it were a crime in him to defend the rights of a people, whose laws excluded him from the privileges of a citizen. "But when I saw," says one of these writers, "the man from whom this country hath reaped such solid advantages; the man who but a few years ago stood forth in vindication of our then doubted rights; to whom the whole continent hath paid its tribute of gratitude, and to whom the illustrious Pitt was wholly indebted for his famous enthusiastic speech in support of America, held up as an object of lawless fury, and that too principally by one who doth not enjoy the privilege of offering his puny vote at an election, I cannot describe what I then felt. Is it possible that the admiration of the author of "*the*

(13) The essays of Mr. Dulany, were published in *Green's Gazette* of 7th January, 18th February, 8th April, and 3d June, 1773: and those of Mr. Carroll, in same of 4th February, 11th March, 6th May, and 1st July, 1773. They occupy nearly all the columns of these numbers.





*Considerations*," affected in one place by this patriotic nursing of St. Omers, could escape you? Doth not the haggard image of Jacques Clement, professing a zeal for the service of Henry III. of France, at the very moment he was summoning all the powers of his soul and body, to plunge his knife into his bowels, rush upon your thoughts?" (14) Such was the character of many of these inflaming appeals; but they were addressed to a people who only the more appreciated a vindication of their liberties, coming from one to whose support they had but little claim; and instead of rejecting his assistance, they learned from the instance, the folly of making human laws the regulators of conscience. In the results, Mr. Carroll certainly obtained a decided victory. The elections held in May, 1773, during the progress of this discussion, were attended with great excitement, and resulted in the complete triumph of the anti-proclamation party. Immediately after this result, and upon the instruction of public meetings held at Annapolis, and in the counties of Frederick, Baltimore, and Anne Arundel, the thanks of the people were formally presented to "*The First Citizen*," through their delegates elect. (15) He had now established a rank and influence in the province at large, which rendered him prominent in its councils and operations, in the consummation of independence, which was soon to follow.

After the discussion was dropped by these combatants, a new advocate for the proclamation presented himself. *John Hammond*, who succeeded Mr. Dulany in the effort to rescue this measure from public indignation, was a lawyer of distinguished abilities, and hitherto a conspicuous member of the Assembly. He was a delegate from Anne Arundel, in the Assembly immediately succeeding the issuing of the proclamation: but at the new elections, in May, 1773, refusing adherence to the opposition party, and being fully satisfied that his sentiments were in opposition to those of the great body of his constituents, he declined being a candi-

(14) Green's Gazette of 25th March, 1773.

(15) The letters of thanks, pursuant to these instructions, are preserved in Green's Gazette of 20th and 27th May, and 10th June, 1773. These, as well as the instructions, preserve his assumed character, and are addressed to him as "*First Citizen*."



date. Some of the publications consequent upon that election, having ascribed to him an improper interference with the measures adopted by the people of his county to celebrate their victory, he at length published a vindication of his conduct, in which he entered into an elaborate defence of the proclamation. It displays abilities of a high order, but abounds, as was usual with the political essays of that period, with harsh reflections upon the conduct and motives of the principal leaders of the opposition. He had thus thrown down the gauntlet: and the defiance was not long unanswered. *Thomas Johnson*, *William Paca*, and *Samuel Chase*, all lawyers of eminence, distinguished members of the lower house, and leaders of the opposition, now entered the lists as his antagonists. The promises of Mr. Chase's early efforts against the stamp act, had been fully redeemed. Still the fearless champion of popular rights, his mind swayed, and his energy inspired confidence, wherever he moved. In his co-adjutors, on this occasion, he had men worthy to be called his peers. The reputation of *Thomas Johnson*, does not rest alone upon the memorials of our colonial history. It has a prouder record, in the history of his State, in the councils of the American nation. Distinguished as the first governor of Maryland, after her elevation to the rank of an independent State, and as one of her ablest representatives in the continental Congress, his efforts in this mere provincial controversy are adverted to, not as the evidences of his character, but as the earnest of those virtues afterwards so conspicuous, in the discharge of his arduous and dangerous duties, during the darkest hours of the revolution. At this early period, he held a professional rank, and enjoyed a degree of public respect in his own colony, sufficient for enviable distinction. Mr. *Paca* had been, for several years, the representative of Annapolis, and was now, at the early age of thirty-three, the compeer of such men as Mr. Johnson, and Mr. Chase. Engaged in the study of the law, at Annapolis, at the same period, and concurring in their general views of public rights and policy, the foundation was there laid, of an intimacy and a personal attachment between Mr. Chase and Mr. Paca, which endured throughout life. The latter, more bland and conciliating in his demeanor, but as firm in his purposes, was found side by side with the





former, in the transactions of this period, as the friend of private life, and the fellow-laborer in public duties. Thus bound together by the firmest bonds of life, how beautifully was it ordained that their names should pass down to after ages, associated in the same close connexion on the *Declaration of American Independence!* With such men as antagonists, and such a cause to sustain, there was fearful odds, even against one so gifted as Mr. Hammond: and the controversy, therefore, terminated with his first essay, and their reply. (16) Presenting some new views of the measure in question, which was principally sustained by Mr. Hammond under the ordinance power of the charter, their publications display an ability which entitles them to rank with those of Dulany and Carroll: and all of them deserve to be rescued from the oblivion to which they are passing, with the subject from which they sprang.

The course of the colony, in relation to this protracted controversy, was such as we would naturally expect from Proceedings of the lower house in 1771, in opposition to the proclamation. a people on the eve of a revolution, in which they were to manifest the fullest acquaintance with the principles of political liberty, and the most unyielding adherence to them under every circumstance of privation and danger. The first Assembly held after the issuing of the proclamation, was convened in October, 1771. During a session of more than two months, every effort was then made by the lower house to procure the withdrawal of the proclamation. The journals of that session abound with interesting discussions of the subjects in controversy; and its proceedings display a high degree of ability. Prominent in these discussions were Messrs. Chase, Paca and Johnson, Charles Graham of Calvert, John Hall of Annapolis, and Edward Tilghman of Queen Ann's, all of whom were the opponents of the proclamation. Defenders it had none: for although there were one or two dissentients on the propositions relative to its advisers, those denouncing the measure itself, as illegal and oppressive, were unanimously adopted. By the resolves of that session, the right of taxation was asserted to be the exclusive right of the Assembly; and the

(16) Mr. Hammond's vindication will be found in Green's Gazette of 29th July, 1773: and the joint reply of Messrs. Johnson, Paca, and Chase, in Gazette of 9th September, 1773.





exercise of it by any other power pronounced unconstitutional and oppressive: the proclamation, and the regulation of fees in the land office, were declared to be arbitrary and illegal; and their advisers stigmatized as enemies to the peace, welfare and happiness of the province, and to its laws and constitution. (17) In the address of the lower house to the governor, which followed up these resolves, the arguments against the legality and propriety of these measures were closed by an appeal, remarkable for its just conceptions of their character. "Permit us (says this address,) to entreat your excellency to review this unconstitutional assumption of power, and consider its pernicious consequences. Applications to the public offices, are not of choice but necessity. Redress cannot otherwise be had for the smallest or most atrocious injuries; and as surely as that necessity does exist, and a binding force in the proclamation or regulation of fees in the land office be admitted, so certainly must the fees thereby established be paid to obtain redress. In the sentiments of a much approved and admired writer, suppose the fees imposed by this proclamation could be paid by the good people of this province with the utmost ease, and that they were the most exactly proportioned to the value of the officers' services; yet, even in such a supposed case, this proclamation ought to be regarded with abhorrence. *For who are a free people?* Not those over whom government is reasonably and equitably exercised; but those who live under a government so constitutionally checked and controlled, that proper provision is made against its being otherwise exercised. This act of power is founded on the destruction of constitutional security. If the proclamation may rightfully regulate the fees, it has a right to fix any other quantum. If it has a right to regulate, it has a right to regulate to a million; for where does its right stop? At any given point? To attempt to limit the right, after granting it to exist at all, is contrary to justice. If it has a right to tax us, then, whether our money shall continue in our own pockets, depends no longer on us, but on the prerogative." (18)

(17) Journals of 18th October, 1771.

(18) Journals of 22d November, 1771. This address was presented to the house by Thomas Johnson, then a delegate from Anne Arundel; and there were but three dissentients from its adoption.



These remonstrances were unavailing. The governor adhered to his original views, sustaining them by the emphatic declaration, that instead of recalling his proclamation, were it necessary to enforce it, he would renew it in stronger terms. Compromise was now hopeless; and the refractory Assembly was prorogued. It was not again convened before its dissolution in April, 1773; when a new election was ordered for the ensuing month. The discussion between Mr. Dulany and Mr. Carroll was then going on; and the proclamation became again the engrossing topic of public controversy. Parties were rallied; and the elections, which were conducted entirely with reference to this measure, were attended with great excitement, and again resulted in the complete triumph of the opposition. (19)

(19) The extreme and general excitement produced by this controversy, is manifest from the triumphs which followed the victory of the people. Subjoined is an account of the *Celebration at Annapolis*, (extracted from Green's Gazette,) which corresponds, in the manner of celebration, with the rejoicings throughout the province:

"We are requested to insert the following account of the election:

"Last Friday was held the election for the city, when Messrs. William Paca and Matthias Hammond, were chosen by a very large majority of the freemen, indeed, without any opposition; much was expected, as Mr. Anthony Stewart had long declared himself a candidate for the city, even before a vacancy by the resignation of Mr. Hall, whose friends in the county insisted upon his taking a poll there. Mr. Stewart's private character justly recommended him to the esteem of his fellow citizens, but as he was originally proposed to turn out Mr. Hall or Mr. Paca, who stood high in the esteem of the people, and as a strong suspicion was entertained of his political principles and court connexions, Mr. Hammond was put up in opposition to him, and on the morning of the election so great was the majority of votes for Mr. Hammond, that Mr. Stewart thought it prudent to decline.

"The polls being closed, and Messrs. Paca and Hammond declared duly elected, it was proposed and universally approved of, to go in solemn procession to the gallows, and to bury under it the much detested proclamation.

"A description of the funeral obsequies may not be disagreeable to the public:

"First were carried two flags with the following labels: on one, Liberty; on the other, No Proclamation. Between the flags walked the two Representatives; a clerk and sexton preceded the coffin, on the left the gravedigger, carrying a spade on his shoulder—the Proclamation was cut out of Antilon's first paper, and deposited in the coffin, near which moved slowly





Cotemporaneous with the proclamation controversy, was another, conducted with equal spirit and ability, and contributing largely to the excitements of this period. In  
Origin of the Vestry Act question. intrinsic interest, *the Vestry Act question* was scarcely inferior to the former; but it did not involve the same high constitutional doctrines; nor did its discussions lead to the same investigation of the principles of government, and of the proper securities of political rights. Yet although a mere technical question, it was so mingled with the political contests of this period, that we shall be pardoned for adverting to its general nature and objects. It has been seen, that the church of England became the established church of the colony in 1692; and that provision was then made for the established clergy, by the imposition of a poll tax of 40 lbs. of tobacco on the taxables of each parish. This tax was assessed with the public dues, and sent out to the sheriff for collection, for the use of the minister. By succeeding acts, it was continued down to the act of 1702, upon which the church establishment principally rested at this period. Under the inspection law of 1763, which regulated clergy dues as well as officers' fees, this tax was reduced, during its continuance, to 30 lbs. of tobacco per poll; and that law being suffered to expire, in consequence of the disagreement between the two houses already alluded to, the more onerous tax of the act of 1702 was therefore revived.

Taxes are not generally acceptable, in any form or for any purpose, to those who pay them; but they are particularly odious,

on, two drummers with muffled drums, and two fifes, playing the dead march; after them were drawn six pieces of small cannon, followed by a great concourse of citizens and gentlemen from the country, who attended this funeral. In this order they proceeded to the gallows, to which the coffin was for a time suspended, then cut down and buried under a discharge of minute guns. On the coffin was the following inscription:

"The Proclamation, the Child of Folly and Oppression, born the 26th November, 1770, departed this Life 14th of May, 1773, and Buried on the same day by the Freemen of Annapolis."

"It is wished that all similar attempts against the rights of a free people may meet with equal abhorrence; and that the court party, convinced by experience of the impotency of their interest, may never hereafter disturb the peace of the city, by their vain and feeble exertions to bear down the free and independent citizens."





when levied to sustain a church establishment. There is something in tithe systems, so essentially opposed to the nature of our religion and the precepts of its divine author, that the public sentiment often revolts from them, even when employed to sustain a worthy ministry. As if to illustrate their unfitness for the religion with which they have been interwoven, they have generally had the most unhappy influence upon the character and efficiency of the clergy: spiritual sinecures have been their results; and those sustained by their emoluments have become the drones of the church, and sometimes its reproach. There have been, of course, many honorable exceptions; but their general tendency is, unquestionably, to convert the clerical order into a mere temporal profession, embraced for its profits; and when thus perverted, the taxation which sustains them, is the most odious species of oppression which can exist in society. Under the church establishment of Maryland, the patronage and advowson of the churches, or in other words, the right of appointing the incumbents of the parishes, was exclusively in the governor; but pluralities were forbidden. (20) There were at this period forty-five parishes in the province, and the value of the benefices in these was continually increasing with the population. The revenues of the benefice in the Parish of All Saints, in Frederick county, were then estimated to amount to £1000 sterling per annum; and the emoluments of many others were ample and on the increase. (21) Although their emoluments were not sufficient to exhibit the results of a church establishment in so striking a degree, as the rich endowments of the established clergy in the mother country; yet there were some instances of that day, which we shall not detail, that exhibited as much of "*the temporal*," in the temper and conduct of some of the clergy of the colony, as in their revenues. Suffice it to say, that many of the causes which had given strength and sanctity to the establishment, had ceased to operate. The intolerant spirit which called it into existence, had for a long time sustained it with cheerfulness, as a weapon of offence against the non-conformists; but the period of religious alarms had now passed away. Catholics and Protestants were mingling together in social and

(20) Act of 1701-2, chap. 1st.

(21) Eddis's Letters from Maryland, from 1769 to 1776—46.



political harmony; and the seeming virtues of the establishment were fast departing with the exclusive spirit that gave it birth. The incumbents, deriving their appointment from the governor, and their revenues from a system of taxation which operated upon every taxable without respect to his will, were generally classed and acted with the government. Thus situated, their resort to the heavier tax under the act of 1702, after that of 1763 was suffered to expire, was ungraciously received by the people; and their demand of it was considered to conflict with the public will, as expressed in the message of the lower house, at the time of its refusal to re-enact the latter law. These circumstances aroused against the claim a general spirit of resistance; and the expedient of opposition was soon discovered.

The act of 1701-2, under which the claim was preferred, was passed by a House of Delegates, chosen under writs of election issued in the name of King William, the govern-  
Grounds and  
conduct of the  
controversy up-  
on the Vestry  
Act. ment being then in the hands of the crown. A few days after the decease of this king, and without any fresh writs of election or summons, the Assembly was convened, and the act in question passed. It was now contended, that by the death of the king that Assembly was dissolved; and that this act, being passed thereafter, was absolutely void, and not susceptible of confirmation by subsequent acts merely presuming its existence. A controversy upon this technical question at once ensued, which enlisted the abilities of some of the most distinguished lawyers in the province; and rarely has the discussion of any legal question exhibited more learning and talent. The opinions of Mr. Holyday and Mr. Dulany, sustaining the validity of the act; and those of Mr. Paca and Mr. Chase in opposition to it, have been preserved, and are remarkable for their ingenious views and profound investigations. (22) The controversy was not confined to the lawyers. To them, it was but "the keen encounter of the wits;" to the clergy, it was a struggle for their livings; and the press of the colony abounds with publications de-

(22) The opinions of Mr. Holyday and Mr. Paca, and "The Sketches of an argument" by Mr. Dulany, will be found in 1st *Chalmers' Collection of Opinions*, from 303 to 343. The opinions of Mr. Chase and of Mr. Paca are also preserved in their numerous publications on this subject, in *Green's Gazette* of this period.





monstrating their poverty; and sometimes denouncing, and sometimes supplicating, the resisters of their claims. In their own body, they found an advocate of extraordinary power, in the person of Jonathan Boucher. Seizing upon the fact, that Messrs. Chase and Paca were acting as vestrymen under the very act which they held to be void, and considering them the most obnoxious opposers of the clerical claims, Mr. Boucher attacked them without scruple; and a war of publications ensued, which was conducted through the Maryland Gazette, and continued for several months. (23) As controversial essays, these publications would even now be admired. In intellect, Mr. Boucher was a formidable opponent; but the temper of the people was against him. The spirit of resistance ran so high, that in many instances the people refused to pay the tax; and suits were instituted to try the right; in several of which, the decisions in the lower courts were against the clergy. The origin of this question, the operation of the measure involved in it, and the relative situations of those engaged in its discussion, in a great measure identified it with the proclamation controversy; and thus gave to each additional virulence. For nearly three years, they filled the province with the most angry contentions, and imparted an unusual harshness of spirit to all the public transactions. But towards the close of the year 1773, some of the causes of these dissensions were removed by compromise; and others slept, until they were swallowed up in the revolution. During their existence, the province was left without any public system to regulate the inspection of tobacco, its great staple; and to escape, in some degree, the inconveniences arising from the want of such a system, the inhabitants had endeavored to supply it by the regulations of private associations. The general necessities at length compelled the re-establishment of the public system; and thus one of the most oppressive results of these controversies was removed. (24) This was immediately followed by an act regu-

(23) Green's Gazette of 31st December, 1772; 14th and 28th January, 4th, 11th and 25th February, 4th, 18th and 25th March, 1st, 15th and 29th April, and 27th May, 1773.

(24) Act of November, 1773, chap. 1st.





lating clergy dues: (25) and there then remained no cause of dissension, but the determination of officers' fees by the proclamation. The latter appears to have remained unadjusted until the revolution; but, with the removal of the other causes of excitement, and the renewal of the contest with the mother country, it ceased to agitate the colony.

The colony of Maryland, during the progress of these internal dissensions, was removed from the causes and operation of the difficulties still existing and increasing between the parent country and some of the other colonies. From the collisions with the military, and the oppressions of the revenue officers, which so agitated some of the northern colonies, and especially Massachusetts, it had been entirely exempt. From the nature of the proprietary government, the crown neither enjoyed nor exercised any control over the internal administration of the province: and it was therefore free from many of the dissensions arising under the royal governments. The duty on tea was still adhered to, as the badge of English supremacy: but the colonies had never consented to wear it. As to this article, the restrictions of the association of 1769 still existed: and there is reason to believe, that they were generally observed with fidelity. The trade in it was a source of great gain to the East India company: and one of its principal vents being thus closed for several years, a large quantity of it had accumulated in the warehouses of that company. The selfish interests of the latter, now co-operated with the views of the English ministry, in the adoption of a measure, which if once permitted a footing in the colonies, would soon have restored the trade. In May, 1773, that company was allowed, by act of parliament, upon the export of teas to America, a drawback of the duty; so that whilst the duty was submitted to, the price of the article was not enhanced. The company immediately availed itself of this privilege; and the

(25) Act of November, 1773, chap. 28, by which the *poll tax* for the clergy was fixed at 30 lbs. of tobacco, or four shillings in money. It was, however, expressly provided by this act, that it should not influence the determination of the question respecting the validity of the act of 1702. Hence it was a mere act of compromise to keep the controversy in abeyance, until the legal adjustment of the question involved in it.



cities of Charleston, Philadelphia, New York, and Boston, were principally selected as the places for the experiment. It was intended for a people too sagacious to be deceived. They knew full well, that the most successful resistance to such attempts, is that which meets them at the threshold: and they acted accordingly. Public meetings were convened, and resolutions adopted, to prevent the landing of the tea. The consignees of it became as obnoxious as the stamp distributors of former times; and were pointed at as objects for the same summary process. In Charleston, it was landed after much opposition, but was never exposed to sale; and the vessels intended for Philadelphia and New York, were obliged to return to England with their cargoes. In Boston, notwithstanding the determined opposition of its people, several circumstances concurred to favor its landing. The consignees there were attached, by interest or connexions, to the ministerial party; the governor was determined to effect its landing, and the military forces there stationed invested him with considerable power. The consignees therefore refused to resign their trust; and the people, becoming apprehensive that their designs might be frustrated, resorted to a more effectual expedient. The vessels were entered by persons in disguise, the chests broken, and the tea thrown overboard. The whole affair was conducted with a strict regard to that single object, and with a degree of deliberation and confidence indicating full concert and the assurance of general assistance. The measure is believed to have been concerted in the secret meetings of the patriots, and to have been accomplished by persons selected for the occasion. The English ministry so understood it: and receiving it as the proceeding of the people of Boston, they acted upon that persuasion.

A bill was immediately brought into parliament, stripping Boston of its privileges as a port of entry and discharge, which was passed after a very feeble opposition, and received the royal sanction on the 31st of March, 1774. This was followed by the proposition of other measures destructive of the fundamental principles of the charter of Massachusetts, and fraught with the most fatal consequences to her political liberties. By the passage of the Boston port bill, the blow was struck which permitted no retreat, but that of defeat

Boston Port Bill,  
and its reception  
in Maryland.





and submission. The issue was made: and the free and fearless people of these colonies sprang up every where in prompt concert to meet it. The intelligence of these measures was received by the people of Maryland, with the same general indignation which attended their reception in the other colonies. They were ready for the crisis: and a general convention was immediately proposed, as the first step of opposition. Public meetings were at once convened in all the counties; the proposition sanctioned; and deputies appointed to the convention. The proceedings of many of these county meetings have been preserved. (26) We cannot better describe them, than in the language of a cotemporary, and an officer of the English government, writing from Maryland at the very period of their adoption: "All America is in a flame: I hear strange language every day. The colonists are ripe for any measures that will tend to the preservation of what they call their natural liberty. I enclose you the resolves of our citizens: they have caught the general contagion. Expresses are flying from province to province. It is the *universal* opinion *here*, that the mother country cannot support a contention with these settlements, if they abide steady to the letter and spirit of their association." (27)

(26) The proceedings of the meetings held for Annapolis, and the counties of Baltimore, Anne Arundel, Frederick, Harford, Charles, Kent, Queen Anne's, and Caroline, are preserved in Green's Gazette of 2d, 9th, 16th, and 30th June, 1774.

(27) Eddis's "*Letters from America, Historical and Descriptive, comprising occurrences from 1769 to 1777, inclusive*," 158. The author of this rare work, was the Surveyor of the Customs at Annapolis, where he remained from 1769, until the adoption of our State government. During all this period, he appears to have enjoyed, in a high degree, the confidence of governor Eden, to have associated freely with the people of the province generally, and to have been fully acquainted with their temper and sentiments. His letters manifest a considerable acquaintance with the institutions of Maryland, and the character of its government: and many of his remarks upon the character of individuals, and the probable results of measures, exhibit much sagacity. Some of them are written as if with the pen of prediction. In one of his letters, written immediately after the elevation of Gen. Washington to the commandership of the American army, he has given a sketch of his character, which embodies most of the virtues afterwards so prominently displayed by that illustrious man: and that sketch was drawn from a personal acquaintance with Washington, formed during the occasional





The deputies thus appointed from the several counties, as-  
 General Conven- sembled in general convention at Annapolis, on the  
 tion at Annap- 22d of June, 1774. Never was there assembled in  
 olis Maryland, a body of men more distinguished, by their talents,  
 their efficiency, or the purity of their purposes. Their names  
 should be recorded in the memory of every citizen; and their  
 proceedings are too important a portion of our history to be  
 abridged. We give them at large, as extracted from the journals  
 of the convention.

"At a meeting of the committees appointed by the several  
 counties of the province of Maryland, at the city of Annapolis, the  
 22d day of June, 1774, and continued by adjournment from day  
 to day till the 25th day of the same month, were present,

*For St. Mary's county*, Col. Abraham Barnes, Messrs. Henry  
 Greenfield Sothoron, Jeremiah Jordan. *For Kent county*, Messrs.  
 William Ringgold, Thomas Ringgold, Joseph Nicholson, Junr.,  
 Thomas Smith, Joseph Earle. *For Queen Anne's county*, Messrs.  
 Turbutt Wright, Richard Tilghman Earle, So. Wright, John  
 Brown, Thomas Wright. *For Prince George's county*, Messrs.  
 Robert Tyler, Joseph Sim, Joshua Beall, John Rogers, Addison  
 Murdock, William Bowie, B. Hall, (son of Francis,) Osborn  
 Sprigg. *For Anne Arundel county and the city of Annapolis*,  
 Charles Carroll, Esq., barrister, Messrs. B. T. B. Worthington,  
 Thomas Johnson, Junr., Samuel Chase, John Hall, William Paca,  
 Matthias Hammond, Samuel Chew, John Weems, Thomas Dor-

visits of the latter to governor Eden. In another letter, written in 1769,  
 in speaking of the general disposition of the colonies, he remarks: "Almost  
 from the commencement of their settlements, they have occasionally com-  
 bated against real, or supposed innovations: and I am persuaded, whenever  
 they become populous in proportion to the extent of their territory, they  
 cannot be retained as British subjects, otherwise than by inclination and interest."  
 Coming from one situated as he was, his observations are marked with much  
 candor and moderation. Although deeply regretting the causes of differ-  
 ence between the colonies and the mother country, he adhered to what he  
 considered the obligations of his office, declined entering into the resis-  
 tance of the former, was stripped of his employments, and was ultimately  
 compelled to leave the province. I cannot omit this opportunity of making  
 my acknowledgments to Dr. Ridout, of Annapolis, from whom this work  
 was procured for me, by my friend Mr. Gideon Pearce.



sey, Rezin Hammond. *For Baltimore county and Baltimore Town*, Capt. Charles Ridgely, Thomas Cockey Deye, Walter Tolley, Jr. Robert Alexander, William Lux, Samuel Purviance, Junr., Geo. Risteau. *For Talbot county*, Messrs. Matthew Tilghman, Edward Lloyd, Nicholas Thomas, Robert Goldsborough, 4th. *For Dorchester county*, Messrs. Robert Goldsborough, William Ennalls, Henry Steele, John Ennalls, Robert Harrison, Col. Henry Hooper, Mr. Mathew Brown. *For Somerset county*, Messrs. Peter Waters, John Waters, George Dashiell. *For Charles county*, Messrs. William Smallwood, Francis Ware, Josias Hawkins, Joseph Hanson Harrison, Daniel Jenifer, John Dent, Tho. Stone. *For Calvert county*, Messrs. John Weems, Edward Reynolds, Benjamin Mackall, attorney. *For Cæcil county*, Messrs. John Veazy, Junr., William Ward, Stephen Hyland. *For Worcester county*, Messrs. Peter Chaille, John Done, William Morris. *For Frederick county*, Messrs. Thomas Price, Alexander Contee Hanson, Baker Johnson, Andrew Scott, Philip Thomas, Thos. Sprigg Wootton, Henry Griffith, Evan Thomas, Richard Thomas, Richard Brooke, Thomas Cramphin, Junr., Allen Bowie, Junr. *For Harford county*, Messrs. Richard Dallam, John Love, Thomas Bond, John Paca, Benedict Edward Hall, Jacob Bond. *For Caroline county*, Messrs. Thomas White, William Richardson, Isaac Bradley, Nathaniel Potter, Thomas Goldsborough.

Matthew Tilghman, Esq., in the chair—John Duckett chosen clerk.

It being moved from the chair, to ascertain the manner of dividing upon questions, it was agreed, that on any division, each county have one vote, and that all questions be determined by a majority of counties.

The letter and vote of the town of Boston, several letters and papers from Philadelphia and Virginia, the act of parliament for blocking up the port and harbour of Boston, the bill depending in parliament subversive of the charter of the Massachusetts-Bay, and that enabling the governor to send supposed offenders from thence to another colony or England for trial, were read—and after mature deliberation thereon,

I. *Resolved*, That the said act of parliament, and bills, if passed into acts, are cruel and oppressive invasions of the natural rights of the people of Massachusetts-Bay as men, and of their





constitutional rights as English subjects; and that the said act, if not repealed, and the said bills, if passed into acts, will lay a foundation for the utter destruction of British America, and therefore that the town of Boston and province of Massachusetts, are now suffering in the common cause of America.

2. *Resolved*, That it is the duty of every colony in America to unite in the most speedy and effectual means to obtain a repeal of the said act, and also of the said bills, if passed into acts.

3. *Resolved*, That it is the opinion of this committee, that if the colonies come into a joint resolution to stop all importations from, and exportations to, Great Britain, until the said act, or bills if passed into acts, be repealed, the same will be the most speedy and effectual means to obtain a repeal of the said act or acts, and preserve North America and her liberties.

4. *Resolved*, Notwithstanding the people of this province will have many inconveniences and difficulties to encounter, by breaking off their commercial intercourse with the mother country, and are deeply affected at the distress which will be thereby necessarily brought on many of their fellow subjects in Great Britain, yet their affection and regard to an injured and oppressed sister colony, their duty to themselves, their posterity, and their country, demand the sacrifice—and therefore, that this province will join in an association with the other principal and neighboring colonies, to stop all exportations to, and importations from, Great Britain, until the said act, and bills (if passed into acts,) be repealed: the non-importation and non-exportation, to take place on such future day, as may be agreed on by a general congress of deputies from the colonies—the non-export of tobacco to depend and take place only on a similar agreement by Virginia and North Carolina, and to commence at such time as be agreed on, by the deputies for this province and the said colonies of Virginia and North Carolina.

5. *Resolved*, That the deputies from this province are authorized to agree to any restrictions upon exports to the West Indies, which may be deemed necessary by a majority of the colonies at the general congress.

6. *Resolved*, That the deputies from this province are authorized, in case the majority of the colonies should think the importation of particular articles from Great Britain to be indispensably





necessary for their respective colonies, to admit and provide for this province, such articles as our circumstances shall necessarily require.

7. *Resolved*, That it is the opinion of this committee, that the merchants and others, venders of goods and merchandizes within this province, ought not to take advantage of the above resolve for non-importation, but that they ought to sell their goods and merchandizes that they now have, or may hereafter import, at the same rates they have been accustomed to do within one year last past; and that if any person shall sell any goods which he now has, or hereafter may have, or may import, on any other terms than above expressed, no inhabitant of this province ought, at any time thereafter, to deal with any such person, his agent, manager, factor, or storekeeper, for any commodity whatever.

8. *Resolved, unanimously*, That a subscription be opened in the several counties of this province, for an immediate collection for the relief of the distressed inhabitants of Boston, now cruelly deprived of the means of procuring subsistence for themselves and families, by the operation of the said act for blocking up their harbour, and that the same be collected by the committees of the respective counties, and shipped by them in such provisions as may be thought most useful.

9. *Resolved, unanimously*, That this committee embrace this public opportunity, to testify their gratitude and most cordial thanks to the patrons and friends of liberty in Great Britain, for their patriotic efforts to prevent the present calamity of America.

10. *Resolved*, That *Matthew Tilghman, Thomas Johnson, Junr., Robert Goldsborough, William Paca, and Samuel Chase, Esqrs.*, or any two or more of them, be deputies for this province, to attend a general congress of deputies from the colonies, at such time and place as may be agreed on, to effect one general plan of conduct, operating on the commercial connexion of the colonies with the mother colonies, for the relief of Boston and the preservation of American liberty; and that the deputies of this province immediately correspond with Virginia and Pennsylvania, and through them with the other colonies, to obtain a meeting of the general congress, and to communicate, as the opinion of this committee, that the twentieth day of September next,



will be the most convenient time for a meeting, which time and place, to prevent delay, they are directed to propose.

11. *Resolved, unanimously*, That this province will break off all trade and dealings with that colony, province, or town, which shall decline or refuse to come into the general plan which may be adopted by the colonies.

12. *Resolved*, That copies of these resolutions be transmitted to the Committees of Correspondence for the several colonies, and be also published in the Maryland Gazette."

The restrictions of the association of 1769, had never been formally rescinded, as to the article of tea, on which the duty was continued; and if as to this also, they had been relaxed by the practice of the colony after the abandonment of the other restrictions, they were now revived in all their vigor, without waiting for the sanction of her expected Congress. As to this commodity, which was familiarly called "the detestable weed," the former provisions for prohibiting its importation, were instantly renewed. Many of the proceedings of the county committees of Maryland, occurring during the interval between the assemblage of its convention and the adoption of a new association by the continental congress, manifest the same vigilant and vigorous opposition to its introduction, which characterised the course of the colony immediately after the first adoption of the association. One of these instances of opposition is too remarkable to be passed unnoticed. The tea burning at Boston has acquired renown, as an act of unexampled daring at that day in the defence of American liberties: but *the tea burning at Annapolis*, which occurred in the ensuing fall, far surpasses it in the apparent deliberation and utter carelessness of concealment attending the bold measures which led to its accomplishment. On the 14th of October, 1774, the brig Peggy Stewart arrived at Annapolis, having on board, as a small part of its cargo, seventeen packages of tea, consigned to Thomas Williams and Co. merchants of that place. Although it appears that some of the consignees were not scrupulous about infringements of the association, they would not venture to incur the public indignation, by landing or paying the duties upon the tea, without consulting the inclinations of some of the committee of Annapolis: but, in the meantime, the vessel was entered, and the duties paid by Mr.





Anthony Stewart, a part owner of the vessel. The people, already indignant at the very attempt to import it, were incensed beyond control by the payment of the duties. A meeting of the citizens of Annapolis was immediately convened, by some of the committee of Anne Arundel, at which it was determined that the tea should not be landed; and a committee was accordingly appointed, to prevent its landing, and to superintend the discharge of the remaining cargo. The ultimate disposition of the case was reserved for the consideration of a general county meeting, to be held in a few days thereafter. Apprehensive of the result, Mr. Stewart endeavored to anticipate the purposes of that meeting, by assenting, under the advice of others, to the destruction of the tea, as the only effectual mode of appeasing public indignation. A meeting of the citizens of Annapolis was now called, in advance of the proposed county meeting, to which the proposal to land and burn the tea was submitted, as sanctioned by the assent of Mr. Stewart and of the consignees; but even this would not suffice. Some more exemplary punishment was deemed necessary; and the majority determined to refer the proposition to the expected county meeting. This meeting was held on the 19th of October, and was very fully attended. The subject was then thoroughly investigated by a committee, who recommended the destruction of the tea, and required both of Mr. Stewart and the consignees, a written apology of a most humiliating character. Still the public mind was not satisfied. The destruction of the vessel itself was now proposed; and although the proposition was negatived by the meeting, it was yet sustained by many, who avowed their determination to collect a force for its accomplishment. In this emergency, Mr. Stewart, acting under the advice of Mr. Carroll of Carrollton, proposed to destroy the vessel with his own hands. The proposition was, of course, gladly accepted; and the people repaired in crowds to the water to witness the atonement. Mr. Stewart, accompanied by the consignees, went aboard the vessel, which was run aground at *Windmill Point*; and there, in the presence of the assembled multitude, with the free will of a fatalist, he set fire to his own vessel, with the tea on board, and expiated his





offence by their destruction. (28) This instance, in its manifestation of public feeling, is of a character with those which occurred in other parts of the province; and they evince the prevalence, throughout it, of the most determined and resistless opposition to the measures of the English government.

The Continental Congress, to which all the colonies were looking with the most anxious expectation, assembled at Philadelphia, on the 5th of September, 1774. The character of that Congress, and the results of its deliberations, belong peculiarly to the national history, on which they stand in proud relief, as the memorials of an Assembly, evincing more dignity of sentiment and elevation of purpose, than ever did a Roman senate. Its manifesto of colonial liberties, and its addresses to the king, to the people of Great Britain, and to the colonists themselves, display every where a spirit, as far removed from faction as from submission, as gentle and open to the proffers of honorable reconciliation as it was steeled against the menaces of arbitrary power, as ardently desirous for the restoration of harmony in consistence with public rights, as it was resolved against peace with their abandonment as its condition. The expedient of opposition resorted to by that congress, was that already indicated by public sentiment, and recommended by its successful issue in the previous contests of the colonies. A *Non-Importation* Association was adopted, to take effect in the ensuing December, and to exclude the importation of all articles whatsoever, imported either directly from Great Britain and Ireland, or indirectly by their importation from other places into which they were originally imported from these kingdoms. It prohibited also, the importation of East India teas from any quarter of the world; and to obviate the effects of any importations already made, it embraced an agreement not to purchase or consume, after that period, any teas imported on account of the East India company, or on which the duty had been paid, nor, after the ensuing March, any East India tea imported under any circumstances. Restrictions upon *exportation* of as extensive a character, were also embodied in this association: but these were postponed in their

(28) Green's Gazette of 20th and 27th October, 1774. Eddis's Letters, 170 to 184. Life of Carroll, in Biography of Signers, &c.



operation until September, 1775; after which period, if the difficulties with the mother country were not adjusted, they prohibited the exportation of any article whatsoever, to Great Britain, Ireland, or the West Indies, except rice to Europe. Such were the prominent features of this association, which contemplated, in the last resort, an entire cessation of commerce with the mother country and its principal possessions. Of those who established it, all hoped for its ultimate efficacy; and many of the most sagacious rested upon that hope with entire confidence: yet there were those amongst them, who even now believed, that the controversy must ultimately be decided by the strong hand. (29) It was submitted to a people, expecting its coming, and ready for its adoption; and it instantly received their almost unanimous approbation.

Under the power reserved by the Maryland Convention to its deputies in congress, it was again convened, by their call, on the 21st November, 1774; when the proceedings of the Congress were unanimously approved; and it was declared to be the duty of every inhabitant of the province "to observe strictly and inviolably, and to carry into full execution," the recommended association. If more had been wanting to give efficacy to this declared duty, it was found in the eloquent appeals with which it was enforced by the convention at its session in the ensuing month. "As our opposition (say its resolves,) to the settled plan of the British administration to enslave America, will be strengthened by an union of all ranks of men in this province, we do most earnestly recommend that all former differences about religion or politics, and all private animosities and quarrels of every kind, from henceforth cease, and be for ever buried in oblivion; and we entreat, we conjure every man, by his duty to his God, his country, and his posterity, cordially to unite in defence of our common rights and liberties."

Thus began *the War of the Revolution*, with a system of restrictions, inconvenient and oppressive to the colonists themselves, although of their own adoption, yet resting for its basis and securities upon public sentiment.

(29) Of the latter class were Patrick Henry and John Adams—see 1st Pitkin's U. States, 301.





It could not have had a more efficient support. Tyrants may humble and oppress, laws may awe; but public sentiment erects its throne in the heart. There installed, it sways with a moral power and energy, which bring tyrants to its footstool, and give to law itself its efficacy. Human institutions are its handmaids: but when they seek to drive it from its throne, they learn, in the sad experience of their feebleness, that the very power they have wielded was but its derivative. It keeps the lofty place, where men may stand and say with him of old, "Give me but this, and I will move the world." In these widely extended colonies, with institutions so various and pursuits so diversified, public sentiment had now moulded them into one, and ruled supreme over all. Never was there a dominion more perfect and resistless. Before it had fallen prostrate, all the habits of colonial dependence; and the allegiance to England's monarch, established by law and inculcated by education through ages of uninterrupted loyalty, was exchanged for devotion to American liberty. It was surrounded by none of the harsh penalties of law, nor of the pomp and circumstance of judicial tribunals, to strike terror to the souls of the offender. It did but expose him to public censure, as the enemy of his country's liberties: yet in this simple denunciation, there was enough to appal the stoutest heart. As if he were touched with leprosy, all shrank from communion with "*the denounced*;" and even friends deserted. If secure from popular vengeance, he had no refuge from the withering scorn and contempt of his countrymen, but in humiliating submission, or ignominious flight from his home. With such sanctions to sustain such a cause, who wonders, that the history of the colonies, at this period, abounds with illustrations of public virtue, for which the world has no parallel?

An association for such objects, thus recommended, and thus sustained, could not fail to command general observance; and

Made in which enforced in Maryland. in Maryland, the most judicious measures were im-

mediately adopted to insure its discreet application. After it had received the sanction of the convention, meetings were assembled in all the counties, and committees were selected, amongst whom were distributed the powers and duties proper to give it universal respect and uniformity of operation. Some of these were called Committees of Inspection or Obser-





vation, to whom it belonged to inquire into and report the facts of every case of alleged or suspected breach of the association; and others, Committees of Correspondence, who were empowered to convene county meetings, and were charged with the duty of keeping up a correspondence with the other counties. These regulations were attended with the happiest results. Public feeling, which may sometimes run to riot under the impulse of the best causes, was constantly checked and purified by its operation through these channels; and its dispensations were attended with order and harmony. In this mode the association was sustained in this province until July, 1775; and the relations with the other colonies were kept up, during this interval, by a Provincial Committee of Correspondence, and by the continued appointment of delegates to the General Congress. (30) In the latter, the most implicit confidence was reposed. It has been seen that the instructions to the delegates appointed by the first convention, contemplated only a system of opposition operating upon the commercial connexion of the colonies with the mother country; but those given by the ensuing conventions of December, 1774, and April, 1775, left them free from all restrictions. The former clothed the delegates with general authority "to agree to all such measures as Congress might deem necessary and effectual to obtain a redress of American grievances:" which was accompanied, in those of April, with the *express* declaration of the confidence of the convention "in the wisdom and prudence of the delegates, that they would not proceed to the last ex-

(30) Messrs. Tilghman, Johnson, Goldsborough, Paca, and Chase, the delegates to Congress appointed by the first convention in June, 1774, appear to have been charged with conducting the correspondence with other colonies. But at the session of the Convention in December following, the latter duty was confided to a distinct committee, styled "The Provincial Committee of Correspondence." The persons then appointed to constitute this new committee were, Matthew Tilghman, (who seems to have been the patriarch of the colony, at this eventful period,) John Hall, Samuel Chase, Thomas Johnson, Junr., Charles Carroll of Carrollton, Charles Carroll, barrister, and William Paca. The delegates to Congress were appointed for one congress next succeeding the convention at which they were appointed. The gentlemen appointed by the first Convention were continued as such during this period, and to them were added in December, 1774, John Hall and Thomas Stone.



*tremity*, unless in their judgments they should be convinced that such a measure was indispensably necessary for the safety of their common liberties and privileges." The instructions were accompanied with the solemn pledge, that the province would carry into execution, to the utmost of its power, all measures recommended by the General Congress.

Yet even at this early period, when the nation was resting, with hopes of success, upon this mode of resistance, we discover, in the proceedings of the convention, that they were already contemplating the probable necessity of one more serious, and were preparing the public mind, and organizing the power of the province, in anticipation of its coming. In one of their resolves, at December session, 1774, they announced the determination "that if the late act of parliament relative to the Massachusetts-Bay, shall be attempted to be carried into execution by force in that colony; or if the assumed power of parliament to tax the colonies shall be attempted to be carried into execution by force in that or any other colony, in in such case this province would support such colony to the utmost of their power." The preparatives to meet this engagement were not neglected. The planters generally were requested to devote themselves to the culture of flax, hemp, and cotton, and to the preservation of their flocks for the manufacture of woollens. All persons between the ages of 15 and 60 were recommended to form themselves into companies, to equip themselves with arms, and to engage in military exercises. It was also enjoined upon the committees of the several counties, to raise, by subscription, or in some other voluntary mode, a specified sum of money for their respective counties, to be expended in the purchase of arms and ammunition, which were to be preserved under the direction of the committees. From the proceedings in the counties, which have been preserved, these injunctions appear to have been obeyed with promptness and alacrity. Military associations were every where formed; arms and ammunition were collected; liberty was the watchword; and citizen soldiers were arming for the defence. All gave dreadful note of preparation for the crisis which soon arrived. (31)

(31) Eddis, writing from Maryland in *March*, 1775, has given us a lively picture of the transactions of this period. "From one extremity of this





In the remonstrances of the colonies, and the preparations which ensued, any but an infatuated ministry might have learned the lesson of forbearance. The calm, settled, stern determination, which pervaded this nation, even careless observation might have distinguished, from the faction of the few, or the temporary excitement of the many. When such a spirit rouses to resistance, menaces no longer awe, and even victory does not bring submission. Yet were the English ministry either unaware of the existence of this spirit, or incapable of appreciating its character. The efforts of Chatham, of Burke, and of Fuller, were all unavailing to arrest its mad career in the course of colonial oppression: propositions for reconciliation, which offered honorable retreat from its measures, were rejected with disdain: injury was added to injury; and invective and insult were the arguments addressed to a free and gallant people. The proceedings of the English parliament, during the winter of 1774-'75, dispelled all hopes of speedy and peaceable reconciliation. It was now manifest, that force must be the arbiter: yet the colonists shrank not from this dread appeal. In the battle of Lexington, the first blow was struck; and, on the instant, started up in arms the American nation for the defence of its liberties. Under the direction of its Congress, its army was organized, Washington was their leader, and hostilities be-

continent to the other, every appearance indicates approaching hostilities. The busy voice of preparation echoes through every settlement; and those who are not zealously infected with the general frenzy, are considered as enemies to the cause of liberty; and, without regard to any peculiarity of situation, are branded with opprobrious appellations, and pointed out as victims to public resentment. Very considerable subscriptions have been made in every quarter for the relief of the Bostonians; large sums have likewise been collected for the purchase of arms and ammunition; and persons of all denominations are required to associate under military regulations, on pain of the severest censure."

In another of *July*, 1775, referring more particularly to the condition of this province, he remarks—"The inhabitants of this province are incorporated under military regulations, and apply the greater part of their time to the different branches of discipline. In Annapolis, there are two complete companies; in Baltimore, seven; and in every district of this province, the majority of the people are actually under arms: almost every hat is decorated with a cockade; and the churlish drum and fife are the only music of the times."





gan. The period of probation had passed away; and with it now departed all the remaining energies of the old forms of government. Tolerated in their helpless inefficiency, whilst there was yet hope of reconciliation through pacific measures, they had retained the form of power without its substance. They were now sinecures, occupying powers which were wanted by the colonies for their own defence; and the people were prepared to shake them off as incumbrances. In some of the colonies, the inhabitants cast themselves upon, and were directed by, the advice of Congress, in the adoption of new governments: that of Maryland was re-organized by its people upon their own responsibility. At the convention of July, 1775, a temporary form of government was established in this province, which endured until the adoption of the present state government; as the precursor of which, it still claims our remembrance.

The objects and obligations of that government were fully disclosed in the following *Articles of Association*, which formed its basis:

“The long premeditated, and now avowed design of the British government, to raise a revenue from the property of the colonists without their consent, on the gift, grant, and disposition of the commons of Great Britain; the arbitrary, and vindictive statutes, passed under color of punishing a riot, to subdue by military force, and by famine, the Massachusetts-Bay; the unlimited power assumed by parliament to alter the charter of that province, and the constitution of all the colonies, thereby destroying the essential securities of the lives, liberties, and properties of the colonists; the commencement of hostilities by the ministerial forces, and the cruel prosecution of the war against the people of the Massachusetts-Bay, followed by General Gage’s proclamation, declaring almost the whole of the inhabitants of the united colonies, by name or description, rebels and traitors, are sufficient causes to arm a free people in defence of their liberty, and to justify resistance, no longer dictated by prudence merely, but by necessity, and leave no alternative but base submission or manly opposition to uncontrollable tyranny. The Congress chose the latter, and for the express purpose of securing and defending the united colonies, and preserving them in safety, against all attempts to carry the above mentioned acts

Synopsis of the  
Provisional Go-  
vernment.



into execution by force of arms, resolved, that the said colonies be immediately put into a state of defence, and now supports, at the joint expense, an army to restrain the further violence, and repel the future attacks; of a disappointed and exasperated enemy.

We, therefore, inhabitants of the province of Maryland, firmly persuaded that it is necessary and justifiable to repel force by force, do approve of the opposition by arms to the British troops, employed to enforce obedience to the late acts and statutes of the British parliament, for raising a revenue in America, and altering and changing the charter and constitution of the Massachusetts-Bay, and for destroying the essential securities for the lives, liberties, and properties of the subjects in the united colonies. And we do unite and associate, as one band, and firmly and solemnly engage and pledge ourselves to each other, and to America, that we will, to the utmost of our power, promote and support the present opposition, carrying on, as well by arms, as by the continental association restraining our commerce.

And as in these times of public danger, and until a reconciliation with Great Britain on constitutional principles is effected, (an event, we most ardently wish, may soon take place,) the energy of government may be greatly impaired, so that even zeal unrestrained may be productive of anarchy and confusion; we do in like manner unite, associate, and solemnly engage in maintenance of good order, and the public peace, to support the civil power in the due execution of the laws, so far as may be consistent with the present plan of opposition; and to defend with our utmost power all persons from every species of outrage to themselves or their property, and to prevent any punishment from being inflicted on any offenders, other than such as shall be adjudged by the civil magistrate, the continental congress, our convention, council of safety, or committees of observation."

To procure the general adoption of this Association, copies of it were to be transmitted to the counties, and to be borne about to the inhabitants for subscription by persons specially appointed in each county, for that purpose, by its committee of observation. The subscribed copies were then to be returned to the





convention; and with them, the names of the non-associators. (32)

The supreme power under this government was vested in the *Provincial Convention*. As the unrestrained depository of the public will, it controlled every other authority in the province; and its resolves were law. It was not confined by the ordinary distinctions of power, as legislative, executive, or judicial; and its only limits were its discretion. This convention consisted of five delegates from each county, who were to be elected annually by the persons entitled to vote for delegates under the old government: a majority of the votes was necessary to election; and the elections were to be held under the superintendence of the delegates of the county for the time being. There was no representation of cities; and the county representation was peculiar in requiring a majority of the delegates for any county, to constitute a quorum, and to empower them to give any vote binding upon their county. Vacancies in the delegation of any county were to be filled by the appointment of its committee of observation, the votes of two-thirds of the members being necessary to a choice.

The chief executive power of the province was confided to a *Committee of Safety*, elected by the convention, and consisting of sixteen members, of whom eight were to be chosen from each shore. The appointment of this committee endured only from convention to convention; and at each new election, one half of the members from each shore, to be selected by ballot, were to retire from office. This committee, although in entire subordination to the convention, was clothed with high powers and responsibilities, particularly in relation to the forces and revenues of the new government. It appointed all field officers, and granted all military commissions; it directed all the operations of the military, when in service: and in the recess of the convention, it had power to call them into service, the militia within any part of the province, and the minutemen, either within the

(32) The writer has before him one of these copies, containing the original return of the Associators of Back Creek Hundred, in Cecil county, by Thomas Frisby Henderson. It has the signatures of one hundred and twenty-one associators; and reports but one dissentient.





province or in any of the counties adjoining. Its orders to any amount for the bills of credit issued under the resolves of the convention, were imperative upon the treasurers; and it had also a check upon the latter, in its right to require of them statements of their receipts and expenditures. As the supreme executive power, it could call the convention, during its recess, at any period before the day to which it stood adjourned. The members from each shore, were also the conservators of the association and of the liberties of the province on their respective shores; and as such, in all cases where persons were sent to them by the committee of observation of any county, under charge of having violated the association, or of having done any act "tending to disunite the inhabitants of the province in their opposition, or to destroy the liberties of America," they were empowered to take cognizance of the offence charged, and either to imprison the offender until the next convention, or to banish him from the province. (33)

(33) This organization of the Committee of Safety was of short duration. A re-organization of it took place on the 17th of January, 1776, when it was made to consist of seven members, elected by the convention, of whom four were to be residents of the Western, and three of the Eastern shore; and any four were a quorum. The peculiar shore meetings and powers were also dispensed with; and the members were allowed a stated compensation for their services. Another change was effected on the 25th of May, 1776, under which this committee consisted of nine members, elected in the same manner, of whom five were to be residents of the Western, and four of the Eastern shore.

The members of the *Committee of Safety*, under the first organization of July, 1775, were, Matthew Tilghman, John Beale Bordley, Robert Goldsborough, James Holyday, Richard Lloyd, Edward Lloyd, Thomas Smith, and Henry Hooper, *for the Eastern shore*; and Daniel of St. Thomas Jenifer, Thomas Johnson, Jr., William Paca, Charles Carroll, (barrister,) Thomas Stone, Samuel Chase, Robert Alexander, and Charles Carroll of Carrollton, *for the Western shore*. The members under the second organization of January, 1776, were, Daniel of St. Thomas Jenifer, Charles Carroll, (barrister,) John Hall, and Benjamin Rumsey, *for the Western shore*; and James Tilghman, Thomas Smith, and Thomas B. Hands, *for the Eastern shore*. The members under the last organization, of May, 1776, were the same as in January, with the addition of George Plater *for the Western shore*, and William Hayward *for the Eastern shore*. At June session, 1776, when the convention adopted measures for the establishment of a permanent form of



The *revenues* of this government consisted in the bills of credit issued under the resolves of the convention, and the money raised by voluntary contributions. The portions of it appropriated for, or contributed on either shore, were placed under the care of a treasurer for that shore appointed by the convention, who was required to pay them out upon the orders of the convention or of the council of safety, and also upon the draughts of the branch of the council for his shore, so long as the separate existence and powers of the branches were preserved. They were also under the check both of the convention and of the council of safety, to either of which, or to any committee of the former, empowered to investigate the condition of the revenue, they were bound to submit statements of their receipts and expenditures. (31)

The *county* authorities were entrusted to *Committees of Observation*, elected annually in each county at a stated period, by the persons entitled to vote for delegates to the convention. The elections were held under the inspection of the delegates of the county for the time being; and the committees consisted of a fixed number for each county. To them belonged exclusively the care and enforcement of the association in their respective counties; in discharging which duty, however, they were entirely un-

government, to keep up the committee until the new government was established, the gentlemen elected members of this committee in the preceding May, were all re-elected, except Mr. Hayward, who declined, and in whose place Joseph Nicholson was elected. From December, 1775, the committee had the power of filling up vacancies in their own body, occurring during the recess of the convention.

Their powers were considerably enlarged by the convention in January, 1776. They were then clothed with the power to arrest, and, after hearing, to imprison until the next convention, "all persons guilty of any breach of the association, or of any offences tending to create disaffection or to destroy the liberties of America," in addition to their former power of imprisoning or banishing such offenders when sent to them by any committee of observation; and besides their former powers over the military, they could pardon offenders sentenced to death by a court martial. Some other and minor powers were conferred, which it is not necessary to notice.

(34) The treasurers appointed at the establishment of this government were, Thomas Harwood, Junr., for the Western Shore; and William Hindman, for the Eastern Shore.





der the control of the convention, and were bound to carry into effect either its resolves or those of congress. It was their duty to appoint officers to bear about the association to the people of their counties for general subscription, and also agents to receive voluntary contributions for the public aid. They had cognizance of all breaches of the association in their counties; and had power to inflict upon offenders against it, the censures directed by the resolves of congress or of the convention; and upon probable proof that any person had been guilty "of any high and dangerous offence, tending to disunite the inhabitants in their opposition to the English government, or to destroy the liberties of America," they were required to cause such person to be arrested, and to be sent forthwith, with the charge against him, to the council of safety, or the branch of it for their shore whilst the separate branch powers existed. They were also entrusted with the conduct of the public correspondence for their counties, and were required to appoint for that purpose, out of their own body, and for their own term of service, a committee of correspondence, consisting of five members, of whom any two were a quorum. They had also a partial control over judicial proceedings. It was deemed important by the convention so to restrain these proceedings, that their progress might not interrupt the public harmony, or interfere with the measures necessary for the general defence; and it was therefore ordered by that body, at the formation of this government, that all pending suits, which could not be amicably adjusted, should be continued until its further order; and that no new suit should be instituted, except in certain specified cases, without the permission of the committee of observation for the county. This permission was to be granted only in certain other cases; and for the exercise of this power, the committees of observation were required to appoint special committees, which were styled committees to license suits.

From this summary view of the prominent features of this *Provisional Government* it is apparent, that its original regulations Modifications of as to non-associators were of the most tolerant  
this govern- character. They delegated no power to compel  
ment. submission to the new government. The names of the recusants were returned to the convention, to which alone it belonged to take such orders in their respective cases as the public safe-





ty might demand. The same liberal course was observed, in its original requisitions for the public defence. All able bodied freemen between the ages of sixteen and fifty, (except clergymen, the household of the governor, and persons conscientiously scrupulous,) were required to enroll themselves in the militia under its authority: but cases of refusal, were followed by no specific penalties, and were reserved for the exclusive consideration of the convention or the council of safety, to which they were reported. The necessities of the times, and the increasing bitterness of the contest, soon compelled a resort to harsher measures: yet even these offered alternatives, which justice itself would sanction, and which exhibited a moderation almost without a parallel in the histories of revolutions. These more rigorous measures were adopted by the convention in January, 1776. All non-associators were then indulged until the 10th of the ensuing April, to give in their adhesion to the association. If this were declined, they were at liberty to depart the province with any or all of their property; and they were entitled to a passport from the committee of observation of their county, authorizing them to go beyond sea. If they departed, leaving any of their property behind, it was subject to a proportionate share of the public expense incurred in the defence of the province. If they elected to remain, and yet refused to become associators, the committees of observation for their counties were empowered to disarm them: and also, in their discretion, to require of them bond with security, in such penalties as the committees might deem proper, conditioned that the recusants would demean themselves peaceably in the struggle with the mother country, would hold no correspondence with any person in office under the crown or in arms against the colonies, nor communicate intelligence, in any mode, of the councils or preparations of congress, or of any of the colonial authorities. The regulations as to the militia were also renewed; and the time for enrolling enlarged until the first of the ensuing March; after which period, all persons subject to, and declining enrollment, (except paupers,) were liable to the imposition of a tax not exceeding £10 per year, to be reckoned from the antecedent September, to be assessed by the committees of observation, and to be collected by officers appointed by such



committees, and having power to levy it by distress, if voluntary payment was refused.

Such were the general character and objects of this temporary government, under which the people of Maryland continued to dwell, until the adoption of our State constitution.

Its character and results.

To all under its authority, its dispensations were mild and just; and the proceedings of that period ascribe to them the utmost impartiality. There are instances to show, that neither the sanctity of the pulpit, nor the confidence and privileges thrown around the high office of delegate, could shield the offender from the censures awaiting all who sinned against the liberties of the province. Yet it is manifest, from the distribution of its powers, and its vague definition of offences, that it was a government susceptible of much abuse and oppression. The self-constituted authority of the Long Parliament itself, was not more arbitrary and unrestrained in its nature, than that of the provincial convention. The committee of safety, with its power to arrest and banish or imprison for offences so indefinitely described as to give the widest range to discretion, and with the permitted and required secrecy of its councils, was an engine which malignity or corrupt ambition, once obtaining its control, might have prostituted to the vilest purposes. The committees in the counties, notwithstanding their entire subordination to the provincial authorities, were yet clothed with discretionary powers, which, in their oppressive capacity, were scarcely inferior to those of a Turkish Aga. Even the "*incivism*" of revolutionary France, that term of terror, from whose widely extending grasp, neither age, nor sex, nor virtue, nor talents, nor patriotism, could rescue those to whom it was applied by the prevailing humor or demagogue of the day, did not afford more facilities to the mischievous and oppressive exercise of power, than the vague denunciation of all as offenders, who, in the opinion of the committees, had committed any acts "tending in any degree to promote disaffection or to destroy the liberties of America." With such a definition as its guide, authority had no limit but discretion; and if thus bounded, its mandates were characterized by justice and moderation, they attest at once the purity of those who administered it, and the general prevalence of rational liberty amongst the people by whom it was establish-





ed and sustained. That such was the character of the provincial government, as administered by the convention, is apparent, not only from its transactions, but also from the testimony of contemporaries, given under circumstances entitling it to our fullest confidence. We learn it from the instance and the admissions of an English officer, himself a resident of the province during the continuance of this government, and a recusant of its authority; (35) and from the more just and lively tribute to its character, by one of the most distinguished and patriotic citizens of our infant state. "Such an administration, the immediate offspring of necessity, might have been reasonably expected to be subversive of that liberty which it was intended to secure. But in the course of more than two years, during which it was cheerfully submitted to by all, except the advocates for British usurpation, although many occasions occurred in which an intemperate zeal transported men beyond the just bounds of moderation, *not a single person* fell a victim to the oppression of this irregular government. The truth is, that during the whole memorable interval, between the fall of the old and the institution of the new form of government, there appeared to exist amongst us such a fund of public virtue as has scarcely a parallel in the annals of the world." (36)

In the erection of their provisional governments, the views of the colonists generally were still bounded by the hopes of an honorable and permanent reconciliation with England. At the period when that of Maryland was established, although the dread appeal to arms was already made, and fierce, relentless hostility seemed to lie in prospect, the public mind had not yet been brought to contemplate independence as its probable result. The establishment of independence was not the purpose for which their resistance began; nor was it yet the issue they expected or desired. Never were a people animated by a holier cause, or truer to the principles they professed. Until the attempts of parliament to break down the barriers of

(35) See the Letters of Mr. Eddis, the officer alluded to.

(36) Remarks of the late Chancellor Hanson, introductory to the Journals of the Convention, embodied in his publication of the Laws of Maryland, from 1763 to 1784.





their colonial governments against tyranny, they had enjoyed under them security and happiness. Whilst the right of internal legislation was exclusively exercised by assemblies of their own choice, uncontrolled oppression could never reach them in the administration of their internal interests. They were therefore wedded to their charter governments, by the remembered blessings of the past; and upon them they were content to rest, as the earnest of liberty and happiness for the future. In no colony, was this ardent attachment of its people to their internal government, more prevalent and more justly founded than in Maryland. The reader, who has gone with us in the general survey of the proprietary government and the history of its administration, has perceived, that in the protection of public liberty and private rights, and in all the securities which these derive from self-government, it gave peculiar freedom and privilege to the subject; and that it was generally so administered as to promote the interests and secure the attachment of the colony. That attachment was of the purest character. It was cherished for their free institutions, and not for the personal interests of those who administered them. Henry Harford, the then proprietary, had no hold upon the affections of the colony. His father, Frederick Lord Baltimore, who succeeded to the proprietaryship in 1751, and continued to enjoy it until his death in 1771, had left no claims upon the gratitude or respect of the people. He had never visited the province; and his administration was not endeared by any of those manifestations of kind and anxious regard for its welfare, which characterized that of his predecessor. He had, in several instances, suffered or directed the powers of government under his control, to be wielded against the public wishes; and he had employed the revenues of the province to minister to his pleasures. Harford, who succeeded him and under his devise, was an illegitimate, a minor, and a stranger; and consequently without a single personal claim to sustain his government.

The glorious consummation of the revolution is now "the theme familiar;" and in the retrospect, the transition of these colonies from dependence to independence, presents but a faint image of the apprehensions and difficulties by which it was attended. Yet even at

Independence,  
not the original  
design of the co-  
lonies.



this early period of the struggle, whilst all the ardor of the first impulse was upon the colonists, and their yet undiminished resources and energies inspired confidence, the issue of their appeal to arms was uncertain. Prepared, as they were, for any issue but submission, the immediate declaration of independence was still a measure of the boldest policy. With it, all hopes of reconciliation would vanish; and a sanguinary and protracted warfare was in prospect, which left no alternatives, but victory, or ignominious submission. If successful, they were to be cast into a new state of existence, as distinct and independent communities, of which the weaker provinces might at last become the prey of the stronger. If vanquished, with the rights for which they were contending, would be lost even their acknowledged liberties. These were considerations which operated for some time in all the colonies; and with peculiar force in Maryland, to stay the resort to a measure so hazardous, whilst there were yet hopes of honorable adjustment. The course of this province upon the adoption of this measure has not been generally understood; and it has sometimes been described, as if it had been a shrinking from the common cause. Yet the proceedings of her people, and her convention, in connexion with it, impart to their conduct and motives a very different character. That convention was composed of as firm and uncompromising patriots, as ever directed the councils of any country; and their memory requires no vindication, but the history of their transactions.

At the close of the year 1775, the proposition to declare the independence of the colonies began to engross the public attention. Before that period, the declarations of the colonies present a striking contrast with their acts. The former breathed nothing but peace and the most ardent desires for reconciliation: the latter exhibited nothing but the preparations for war. Every new measure of hostility was accompanied by new professions of allegiance. The renewal of these professions was rendered necessary, by the constant misrepresentation of their purposes. From the origin of the struggle, it had been the effort of the English ministry to fix upon them the character of rebels, whose aim was independence, and whose grievances were prettexts. Apart from such a design,

Objects of the colonies in their repeated disclaimers of this design.





the claims of the colonies came with great power to the hearts and minds of the English people. They asserted a right, familiar to that people, identified with their political liberties, and in times past established by their forefathers with the strong hand. What was consecrated as the patriotism of their ancestors, could not be licentious rebellion in their brethren: what was cherished as the bulwark of their own liberties, could not be unnecessary for the protection of the colonies. The English ministry were aware, that such considerations, if left to their full operation, could not long fail to array against them even the public sentiment of the English people. But if the establishment of independence was believed to be the first purpose of colonial resistance, they knew also that the pride and interests of that people would at once rally them in support of the dominion of England. Hence their studious efforts to establish this purpose; and hence the anxious disclaimers of it by the colonies. At the opening of the parliament of 1775, this design was at length ascribed to them in the speech from the throne, which gave but faint hopes of compromise; and many of the American people began now to consider a total separation as their only security. Yet the great body of the truest and firmest patriots of that period, still believed that the minds of the English people and king were abused by the ministry, and deceived by the representations of the corrupt minions of power amongst themselves; and one last effort was made to rescue them from that influence. About the close of the year 1775, and in the beginning of the year 1776, the purpose of independence was again disclaimed by most of the colonies in declarations of a most solemn character.

In Maryland, it had hitherto been the course of its convention to confide unrestrained power to its delegates in the general Instructions of the Convention to the Delegates in Congress, of 12th Jan. 1776. session in January, 1776, restrictions were, for the first time, imposed upon the delegates; and a formal declaration was again made of the purposes of its opposition. The object of these proceedings is fully illustrated by the cotemporary transactions of the other colonies, and the language of the convention. They were the acts of men determined to be in the right, and to evince to the world, that be the issue what it





might, their motives were pure, and their measures the most honorable resort of freemen. "The experience (say these instructions,) which we and our ancestors have had of the mildness and equity of the English constitution, under which we have grown up and enjoyed a state of felicity not exceeded by any people we know of, until the grounds of the present controversy were laid by the ministry and parliament of Great Britain, has most strongly endeared to us that form of government, from whence these blessings have been derived, and makes us ardently wish for a reconciliation with the mother country upon terms that may ensure to these colonies an equal and permanent freedom. To this constitution we are attached, not merely by habit, but by principle, being in our judgments persuaded, it is of all known systems best calculated to secure the liberty of the subject, and to guard against despotism on the one hand and licentiousness on the other. Impressed with these sentiments, we warmly recommend to you to keep in your view the avowed end and purpose for which these colonies originally associated, the redress of American grievances and securing the rights of the colonists." The delegates were therefore instructed to promote reconciliation as far as possible, "taking care, at the same time, to secure the colonies against the exercise of the right assumed by parliament, to tax them, and to alter their constitutions and internal polity without their consent." They were also prohibited from assenting to a declaration of independence, or to any alliance with any foreign power, or any confederation of the colonies, which would necessarily lead to separation; unless in their judgments, or of that of any four of them, or of a majority, if all present, it should be deemed absolutely necessary for the preservation of the liberties of the united colonies: and if any such measures were adopted by a majority of the colonies against their assent, they were instructed to submit them immediately to the convention, without whose sanction they should not be binding upon the colony. "Desirous as we are of peace, (say they, in conclusion,) we nevertheless instruct you to join with the other colonies in such military operations as may be judged proper and necessary for the common defence, until such peace can be happily obtained."



The declaration, which followed these instructions, was made for the avowed purpose "of manifesting to the king, the parliament, the people of Great Britain, and to the whole world, the rectitude and purity of their intentions in their opposition to the measures of the English ministry and parliament." Explicitly declaring, that they considered their union with the mother country, upon terms that would ensure to them a permanent freedom, as their highest felicity, they concluded their vindication with the following striking expressions: "Descended from Britons, entitled to the privileges of Englishmen, and inheriting the spirit of their ancestors, they have seen, with the most extreme anxiety, the attempts of parliament to deprive them of their privileges, by raising a revenue upon them, and assuming a power to alter the charters, constitutions, and internal polity of the colonies without their consent. The endeavors of the British ministry to carry these attempts into execution by military force, have been their only motive for taking up arms; and to defend themselves against these endeavors, is the only use they mean to make of them. Entitled to freedom, they are determined to maintain it at the hazard of their lives and fortunes."

We will not detain the reader, by detailing the transactions of the English parliament during the session of 1775-'76. They are already recorded in our national histories; and it will suffice to say of them, that they left the colonies but little hope of relief from the justice of England: Their petitions were spurned, their Assemblies declared rebellious, their persons and property made objects of plunder, and those bloodhounds of war, foreign mercenaries, were to be let loose upon them to pillage and desolate their country. The cup of bitterness was now full. Obedience was bondage: the last ties of interest and affection were sundered; and the American people were ready for Independence. In the colonies generally, but especially in Maryland, a declaration of independence had no effect except to close the door against reconciliation. The government then established in this province, was as independent of England in its origin and operations, as that under which we now live, and was endowed with the fullest powers to give it continuance until the liberties of the colonies





were restored. Happily for this province, it had not yet been the seat of war; and so general was the opposition of its inhabitants to the measures of the English government, that disaffection to their provisional authorities, though it might lurk amongst them, dared not appear. Thus freed from the causes of excitement, which operated in other colonies, subject to the scourge of an internal warfare, and dwelling under continual apprehensions of treachery; its people were comparatively calm and moderate, yet not less resolute in resistance. They were ready to keep pace with the movements of the sister colonies; and hence about the period when the proposition to declare independence was beginning to receive sanction, the usual oaths of allegiance to the English government were dispensed with by the Maryland convention. (37) The very forms of allegiance were thus suspended: but its total abolition was still considered by the convention a measure of doubtful policy. Such a step would for ever separate them from an internal government, under which they had hitherto lived, free, secure, and happy: and by destroying the provisional authorities, which could not long survive their temporary objects, it would force upon them the adoption of some new and untried system of government. It was a measure not contemplated at the time of their election; and upon which the sense of their constituents was not yet fully ascertained. But what was more apprehended than all else, it placed them in a new state of existence, the operation of which, upon the separate and independent condition of the province, it was impossible to foresee. The jealousy of the people of Maryland, at all attempts to interweave their internal government with that of the other colonies, is apparent at every period of their colonial history: and it existed, even at this moment, to beget apprehensions. These were now increased by a measure of the continental congress. On the 10th of May, 1776, that body recommended to the colonies generally, a dispensation with the oaths of allegiance to the crown, the total suppression of authority under the English government, and the establishment of permanent constitutions. This proceeding was at once regarded by the Maryland convention, as an attempt at internal regu-

(37) Journals of Convention of 15th May, 1776.





lation; and as such, was met by remonstrances. The resolves embodying these, which were adopted on the 21st of May, betray much of this jealousy. They represented the full efficiency of the convention to call into action all the resources of the province, and its entire willingness to redeem its pledges to the common cause, and to enter into any further engagement "which might be necessary to preserve the constitutional rights of America:" but they asserted, as preliminary to these, the exclusive right of the people of Maryland to regulate its internal government and police. As if to render this right more manifest, in re-appointing their delegates to congress, they again subjected them to the instructions of the preceding January, the nature of which has already been exhibited.

The public feeling was now ripe for the Declaration of In-  
its concurrence  
in the proposi-  
tion. dependence; and the restriction of the delegates, by these instructions, was deeply regretted by the great body of the people, and by the delegates themselves. The latter, by their communion with the representatives of the other colonies, were more fully acquainted with the general sentiment, and more sensible of the advantages of such a declaration at this crisis. Every effort was therefore immediately made by them, to procure for themselves the delegation of unrestricted power upon the question of independence: and through their instrumentality, public meetings were convened in the several counties, the sense of which was every where found to be in favor of an immediate declaration. This was brought to bear upon the convention in all its force; and that body at once yielded to the public will. By its resolves on the 28th of June, the restrictions were removed: and the delegates were empowered to "concur with a majority of the colonies, in declaring them free and independent States, and in forming such further compacts, and making such foreign alliances, as might be deemed necessary." Yet even here the jealousy of internal interference was still apparent: for the pledge of the colony to ratify the measures so adopted was expressly dependent upon the condition, "That the sole and exclusive right of regulating its internal police and government was reserved to its people."



A still more decisive measure was adopted on the 6th of July, 1776. On that day, without waiting for the expected declaration of Congress, and before its final ratification could have been known, the independence of this province was formally proclaimed by its own convention in the following *Declaration*, which, for the dignity of its sentiments, and the force and fervor of its appeals, will not shrink from a contrast even with the far-famed Declaration of American Independence.

*"A Declaration of the Delegates of Maryland."*

"To be exempt from parliamentary taxation, and to regulate their internal government and polity, the people of this colony have ever considered as their inherent and unalienable right. Without the former, they can have no property; without the latter, they can have no security for their lives or liberties.

"The parliament of Great Britain has, of late, claimed an uncontrollable right of binding these colonies in all cases whatsoever. To force an unconditional submission to this claim, the legislative and executive powers of that state have invariably pursued, for these ten years past, a studied system of oppression, by passing many impolitic, severe, and cruel acts, for raising a revenue from the colonists; by depriving them, in many cases, of the trial by jury; by altering the chartered constitution of one colony, and the entire stoppage of the trade of its capital; by cutting off all intercourse between the colonies; by restraining them from fishing on their own coasts; by extending the limits of, and erecting an arbitrary government in the province of Quebec; by confiscating the property of the colonists taken on the seas, and compelling the crews of their vessels, under the pain of death, to act against their native country and dearest friends; by declaring all seizures, detention, or destruction of the persons, or property of the colonists, to be legal and just. A war unjustly commenced, hath been prosecuted against the United Colonies, with cruelty, outrageous violence, and perfidy; slaves, savages, and foreign mercenaries, have been meanly hired to rob a people of their property, liberties, and lives; a people guilty of no other crime than deeming the last of no estimation without the secure enjoyment of the former. Their humble and dutiful petitions for peace, liberty, and safety, have been rejected





with scorn. Secure of, and relying on foreign aid, not on his national forces, the unrelenting monarch of Britain hath at length avowed, by his answer to the City of London, his determined and inexorable resolution of reducing these colonies to abject slavery.

"Compelled by dire necessity, either to surrender our properties, liberties, and lives, into the hands of a British king and parliament, or to use such means as will most probably secure to us and our posterity those invaluable blessings :

"*We, the Delegates of Maryland*, in convention assembled, do declare, that the king of Great Britain has violated his compact with this people, and that they owe no allegiance to him. We have, therefore, thought it just and necessary, to empower our deputies in Congress, to join with a majority of the United Colonies, in declaring them free and independent States, in framing such further confederation between them, in making foreign alliances, and in adopting such other measures as shall be judged necessary for the preservation of their liberties; provided the sole and exclusive right of regulating the internal polity and government of this colony be reserved to the people thereof. We have also thought proper to call a new convention, for the purpose of establishing a government in this colony. No ambitious views, no desire of independence, induced the people of Maryland to form an union with the other colonies. To procure an exemption from parliamentary taxation, and to continue to the legislatures of these colonies the sole and exclusive right of regulating their internal polity, was our original and only motive. To maintain inviolate our liberties, and to transmit them unimpaired to posterity, was our duty and first wish; our next, to continue connected with, and dependent on Great Britain. For the truth of these assertions, we appeal to that Almighty Being, who is emphatically stiled the searcher of hearts; and from whose omniscience nothing is concealed. Relying on his Divine protection and assistance, and trusting to the justice of our cause, we exhort and conjure every virtuous citizen to join cordially in defence of our common rights, and in maintenance of the freedom of this and her sister colonies."

Thus fell, in this colony, to rise no more, the dominion of England, and with it the government of the proprietary: and from their ruins, like the fabled creature of beauty from the





ashes of the *Phoenix*, arose a free and independent State. (38) The transformation was easily accomplished. The provisional government had in fact already suppressed the exercise of all authority by the crown or the proprietary; and under its command, Mr. Eden, the last proprietary governor of Maryland, had departed the province. (39) The establishment of a permanent form of government had also been resolved upon, and the necessary measures for it were already adopted. It had been determined in convention, on the 3d of July, that a new convention should be called for that purpose; and its organiza-

(38) The effects of this revolution upon the private rights of the proprietary, and the adjustment afterwards made with Mr. Harford, will appear hereafter in our remarks upon the *Land Office*.

(39) Robert Eden, who succeeded Mr. Sharpe, assumed the government of Maryland in June, 1769. Unfortunately for him, his administration fell upon a period fruitful in causes of excitement, and abounding in the most angry dissensions, through which it was scarcely possible for him, under any circumstances, to have passed in peace; and which the policy of his measures tended but little to assuage. His unadvised proclamation, although ascribed to the counsels of others, was, of itself, sufficient to have rendered him odious to the great body of the people. Yet in the midst of all the commotions of the province, and even whilst his own measures were exciting general indignation, he seems to have been respected, nay, even beloved. Easy of access, courteous to all, and fascinating by his accomplishments, he still retained his hold upon the affections even of his opponents, who, for the qualities of his heart, and the graces of his manner, were willing to forgive the personal errors of his government. Hence he was permitted to remain in the province, secure and privileged, even after the establishment of the provisional government; and by its express exceptions, he and his household were exempt from its authority. Continuing to enjoy this immunity, under the sanction of the convention, he resided in Maryland until June, 1776, when his departure was required by the discovery of a correspondence, between him and Lord George Germaine of the English ministry. In this correspondence, governor Eden was assured, that his previous conduct was approved by his majesty, and he was directed to hold himself in readiness to assist the operations of an armament, intended against the southern colonies. There was more to excite jealousy, in the existence of such a correspondence, and the manner of its transmission, than in the character of the communication. It was transmitted through the obnoxious Earl of Dunmore, the late royal governor of Virginia, and intercepted in the bay by the commander of an armed vessel in the provincial service, who discovered it on the person of a citizen of Maryland, returning from a visit to Dunmore's fleet, made under the





tion was then fully prescribed. Four representatives were allotted to each county; except in Frederick, where four were allotted to each of its three districts corresponding to the three counties of Montgomery, Washington, and Frederick, as afterwards established by the new convention; and for Annapolis and Baltimore, two for each. The old qualifications for voters and delegates were retained, to which were added others, excluding persons in the regular service of the colony or of the United States, or any of them, and those who had been published as enemies to the public liberties, and had not been restored to public favor.

sanction of the Council of Safety. The correspondence was immediately forwarded, by the person intercepting it, to General Lee, by whom it was sent to the Maryland convention, with an urgent recommendation to seize the person and papers of the governor. The convention not being in session at the time of its arrival, the council of safety disregarded the request of General Lee, and was content to receive the parol of the governor, that he would not leave the province until the meeting of that body. Notwithstanding the recommendations and remonstrances of the sister colonies, and the attempt to seize him by an armed force from Baltimore, the council of safety preserved inviolate his person and property until the assemblage of the convention. By this body, the course of the council of safety was fully approved; a severe censure was passed upon the gentleman heading the attempt from Baltimore; and the governor was for some time permitted to remain, under its protection, in defiance of censures and remonstrances from abroad. Its proceedings, in connexion with his case, are still interesting, as manifesting towards the colonies, the same jealousy of foreign interference, and the same resolute support of its exclusive right to direct the internal concerns of the province, which had been apparent in its opposition to the English government. It was, however, soon evident that his longer continuance in the colony, might bring his official obligations into conflict with its interests: and there was still a strong and increasing disposition amongst the people, which was fomented by "*the Whig Club*" of Baltimore, to lay violent hands upon him even against the injunctions of the convention.—He was therefore requested by the convention on the 24th of May, to leave the province: and in accordance with this request, which was couched in terms manifesting the most sincere regard for him, Mr. Eden departed from Annapolis in the ship *Fowey*, on the 24th of June, 1776.—"Till the moment of the governor's embarkation on the 23d, (says Mr. Eddis) there was every reason to apprehend a change of disposition to his prejudice. Some few were even clamorous for his detention. But the council of safety, who acted under a resolve of the convention, generously ratified the engagements of that body; and after they had taken an affectionate leave of their late supreme magistrate, he was conducted to the barge with every mark of respect due to the elevated station he





The place, time, and manner of election, were designated, and a period assigned for the meeting of the new deputies. The existing convention was then, *by itself*, declared to be dissolved on the ensuing first of August: but the council of safety was still continued in existence, as the executive of the province, to await the regulations of the intended Assembly. The new convention was accordingly constituted; and its members assembled at Annapolis on the 14th of August, 1776. The first step towards the objects of its assemblage, was to confide the preparation of the new form of government and a charter of rights, to a special committee, from which they were reported on the 10th of September. (40) Copies of them were immediately published, and transmitted to each county; and the convention was adjourned for several days, so that its members might ascertain

had so worthily filled."—He escaped in good season; for the occurrences of that day, following his embarkation, effected an entire revolution in public feeling. Some deserters were received on board the *Fovey* on the evening of that day, whom captain Montague refused to surrender: and upon application to governor Eden, he professed his inability to effect their restitution. This proceeding was a gross breach of confidence, as the vessel had been permitted to come up under the flag of truce, and as such, was highly resented. All communication with the vessel was instantly stopped: the governor's property, which was not yet embarked, was detained; and the ship departed without it on the evening of the 24th.—After the close of the war, governor Eden returned to Maryland, as I am informed, to seek the restitution of his property; and here died.

The above history of the causes and manner of his departure, are collected from the journals of the convention of May and June, 1776, Green's Gazette, Eddis's Letters 278 to 316, and Gerardin's Continuation of Burke's History of Virginia, 155.

(40) The original members of this committee, (who were elected by ballot) were Messrs. Matthew Tilghman, (President of the convention) Carroll, barrister, Paca, Carroll of Carrollton, Plater, Samuel Chase, and Robert Goldsborough. Messrs. Chase, and Carroll, barrister, having resigned their seats as members of the convention, in consequence of certain instructions from their constituents which they could not approve, their places were supplied, by the appointment of Thomas Johnson, and Robert Hooe.—Mr. Chase was re-elected, but did not take his seat until the day on which the committee reported.

The form of government and bill of rights so reported, were but slightly altered in their passage through the convention. We know not by whom





the sense of the people upon the adoption of the proposed government. It re-assembled on the 2d of October: and, after the fullest discussion, "*a Constitution*," and "*Declaration of Rights*" were finally adopted, the former on the 8th, and the latter on the 3d of November. (41) The first Assembly of Maryland, under the new constitution, assembled on the 5th of February, 1777; and the new government was at length organized on the 13th and 14th of that month, by the election of Thomas Johnson as its first governor, and Charles Carroll, Senr., Josiah Polk, John Rogers, Edward Lloyd, and John Contee, as its first executive council.

Thus was introduced and established the State Government of Maryland: which it is now our purpose to trace through all its modifications, from its establishment to the present day, and to exhibit in connexion the public institutions of the State which have sprung from its operation. From this period, the history of Maryland assumes a double aspect, because of its distinct yet not inconsistent capacities, as an independent State, and as a member of the United States under the old confederation and the present union. Looking to its former capacity alone, the history of its state institutions comprises all that is interesting in its internal administration; and to these our attention will be particularly directed. The consideration of its external relations belongs peculiarly to the history of the nation; but when we shall have completed the survey of its internal government,

they were drafted; nor whether they were the production of any particular member or members of this committee.

(41) The reader will find, in the appendix to the second volume of this work, the names of all the members of this convention.

In closing the history of the convention-government of Maryland, we shall surprise the reader by the fact, that the State has not in her archives, *unless very recently obtained*, a single memorial of its existence or operations. The proceedings of all the provincial conventions were published; and there is, or was a few weeks since, a complete collection of them in the possession of Mr. Jonas Green, of Annapolis.—There is not, I believe, another entire collection of these in the State, if there be not one in the possession of the honorable Gabriel Duvall, of the Supreme Court, who was for some time the clerk of the convention, afterwards occupied an important and responsible office under the provisional government, and was at all times distinguished by his zeal and efficiency in the cause of the revolution.



we shall endeavor to present a general view of its past and present relations to the federal government, exhibiting its rights and obligations under it, its relative rank and influence as a member of it, and its general course upon the national administration.





## CHAPTER VII.

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### DISTRIBUTION OF THE LEGISLATIVE POWER UNDER THE STATE GOVERNMENT OF MARYLAND.

THE legislative power of the State government of Maryland is vested in two distinct and co-ordinate legislative bodies, which are respectively styled "*The Senate*" and "*House of Delegates*." The legislature, thus composed, is styled by our constitution, "*The General Assembly of Maryland*." (1) No control over its legislation is confided to the executive. The governor, who is the supreme executive officer of the State, does not participate in the enactment of laws. The constitution does indeed require, that all bills passed by the General Assembly, when engrossed, shall be presented by the Speaker of the House of Delegates, in the Senate Chamber, to the governor, who shall there sign them, and affix thereto the Great Seal of the State, in the presence of the members of both houses. (2) Yet this is a mere ministerial power, which he cannot withhold, and in the exercise of which he is not permitted to consider the propriety of the acts submitted. He has no *вето* upon them; and his signature is not necessary to give them efficacy, but is a mere authentication of them as the acts of the Assembly.

In this respect, our State government is materially different, not only from the proprietary government which preceded it, and that of the mother country, but also from most of the forms of state government prevailing around us: yet however anomalous this feature of it may first appear, it will be found, on closer examination, to be in perfect consistence with the origin and nature of our supreme executive power. When the executive is,

(1) Constitution, article 1st.

(2) Constitution, article 60.





as to its existence, totally independent of the legislative power, when it springs from a different source, or from the same source by a different channel; or when it is clothed with personal rights, privileges, and dignities, which, although the consequence of official rank, are yet distinct from its purely official powers, there is some propriety in the *veto*. By such a check only, can its separate and independent existence, and the rights and dignities flowing from that existence, be effectually protected. In England, the king is no longer considered to hold his office by *divine* tenure. His power and dignity rest for their acknowledged foundation upon the will of the nation; and the doctrine, which so bases them, is rendered familiar by the acts which have been passed to regulate the succession to the throne. Yet the form of the English government, as an hereditary monarchy, contemplates the personal exemption of the king from the legislative power; and the existence of independent rights, as incident to his high office and rank, which can be withdrawn only by the return of its people to natural rights. His veto upon the acts of parliament, is therefore regarded as essential to his continuance in that state of privileged power and dignified independence, in which it is the design of the English constitution to sustain him. The proprietary veto upon the acts of our colonial Assembly rested upon similar reasons. The proprietary derived his right to the soil of the province, and his powers of government over it, from his charter. Those who migrated to his colony, voluntarily submitted themselves to a dominion derived from the crown; and the right of legislation through Assemblies of the freemen, was given as ancillary to that dominion. If the charter had given the legislative power exclusively to the colonists, it would have placed the powers of the proprietary at their feet, and would thus have conflicted with its own nature and objects.

In the republican forms of government around us, which confer the executive *veto*, we discover reasons for its existence not applying to our constitution. Under most, if not all of those governments, the supreme executive springs directly from the people; and having thus a common origin with the legislature, it is clothed with this power; not for the preservation of its own privileges, but merely that it may operate as a salutary check upon legislation generally. Its existence rests upon the same reasons which



have recommended the division of a legislature into two branches: and being established for the general benefit, and not for the protection of the executive rights, as in England, its control generally ceases under circumstances warranting the inference, that it conflicts with the well ascertained public will. Hence we find that under the governments alluded to, if the assent of the executive is refused to an Act, it may still be passed into a Law, if a certain number of the members of both branches of the legislature will concur in its passage. Under the constitution of the United States, if the President refuses to sanction an Act, he returns it, with his objections, to the house in which it originated. His objections are then entered at large upon the journals of that house: and if, upon reconsideration, with these objections before them, two-thirds of the members of each house of Congress still vote for it, it becomes a law without his assent. The provisions of the state constitutions, under which the veto exists, although in some instances varying from this mode, are yet analogous in their general character: and they all illustrate, that the power is intended merely as a qualified check.

Such a check, for such purposes, incident to the office of governor of Maryland, would be a most useless investment of power. He is elected by the very legislature upon which it would operate. He is elected annually: and his re-eligibility renders him virtually the dependant of those who elected him, not merely because they have called him to the office, but also because, in the ordinary course of events, many of them will pass upon his re-election. To deposit such a check with an officer so created and so situated, would be little better than to commit the legislature to its own guardianship. It may also be remarked, that there is less necessity for its existence under our constitution than under those of the sister states. It will hereafter appear, that in the organization of our Senate, the design to create a check upon the popular branch of the Assembly, is carried further than in the constitution of any other legislative body in the United States: and that it would be visionary to look for further checks, in the grant of an executive veto.

The legislative power of the state being therefore confided exclusively to the two houses of Assembly, it leads us to consider—the organization and characteristic features of the Senate and the





House of Delegates—the nature, extent, and exercise of the powers of the General Assembly—the nature, extent, and exercise of the peculiar rights and privileges of each house of Assembly—and the character and extent of the rights, privileges, and disabilities, of the members of the General Assembly, or of either house.—These will be severally considered in the following chapters.





## CHAPTER VIII.

### ORGANIZATION OF THE HOUSE OF DELEGATES.

IN viewing the constitution of the House of Delegates, we shall consider, (1) The qualifications of voters—(2) The qualifications for the office of delegate—(3) The manner of election—(4) The peculiarities incident to these elections in the cities of Annapolis and Baltimore—(5) The manner of filling vacancies—(6) The distribution of the right of representation—(7) The tenure and compensation of the office of delegate.

#### (1) *Qualifications of voters.*

For many years after the colonization of Maryland, its people appear to have enjoyed an elective franchise of the most extensive kind. Under the charter, the legislative power was to be exercised by the proprietary, "by and with the advice, assent, and approbation of the freemen, or of the delegates or deputies," the right being reserved to him of selecting the mode in which they should be assembled. Collecting the import of the word "freemen," as here used, from its legal acceptation at that period, and the expressions of other sections of the charter, we might be led to conclude that it was synonymous with "freeholder." In the early practice of the government, however, it appears to have had a different signification; and to have been held to embrace every free resident, without regard to the possession of a freehold. (1) In the infancy of the colony, the elective fran-

(1) Mr. Bozman appears to have entertained the opinion, that the term "*Freeman*," as here used, must be received according to its legal acceptation: and that so understood, it is synonymous with "*Freeholder*." In confirmation of his opinion, that they were legal synonyms at the period when the charter was granted, he refers to Sir H. Spelman's Glossary, word "*Homo*," Magna Charta, chap. 14, Coke's 1st. Institutes, 58, and 2d Institutes, 27 and 501. But his strongest argument is found in the fact, that



chise was not highly estimated; and there are several instances to manifest, that the inconvenience of personal attendance, and the obligation to defray the expenses of delegates, occasionally caused it to be considered as a grievance. (2) It was, therefore, the

they are used as such in the Charter itself. "*Liberi Homines*," are the words of the 7th section of the Charter, to designate the persons entitled to participate in legislation, and these have been translated "Freemen:" but in the 8th section, they are described as "*Liberi tenentes*," or freeholders.

Yet, at last, the argument amounts only to this, that the proprietary was not bound to summon any but freeholders to the Assembly: and this appears to have been conceded, for otherwise his Ordinance of 1681, restricting the right of electing delegates, to freeholders, or persons having a given amount of visible personal estate, would have been illegal. If all freemen were entitled under the Charter, he had no right to exclude any for the want of property. But the remark of the text is, that the elective franchise was not, in fact, so restricted before 1681: and that before that period, all resident freemen participated in it. It was not until 1681, that any regular and permanent organization of the lower house was established. Until that time, the warrant for summoning each Assembly, directed the manner of its constitution. The acts relative to its organization, which are briefly noticed in Bacon's Edition of the Laws, such as the acts of 1638, chap. 1st; 1642, chap. 1st; 1647, chap. 1st; and 1650, chap. 1st, merely applied to the particular Assembly by which they were enacted. I have examined the various warrants for Assemblies before 1681, which have been preserved; and none of them exhibit a restriction of the right of electing delegates, or of appearing in person in the Assembly, to freeholders. But we are not left to inferences and surmises: for we have an express decision of the Assembly in 1642, that there was no such restriction. The following is the record entry of the decision:

"Mr. Thomas Weston being called, pleaded he was no freeman, because he had no land, nor certain dwelling here: but being put to the question, it was voted, that he was a freeman, and as such bound to his appearance by himself or proxie: whereupon he took his seat in the house."

*Journals of 1642; Assembly Proceedings from 1637 to 58, 253.*

(2) We find an illustration of this at as late a period as 1671. At the session of that year, a message was sent by the lower to the upper house, in which they complained, that several delegates elect had not been summoned to attend, and desired to know the cause of it. To which it was replied by the upper, that all had not been summoned from Kent, Dorset, and Somerset, because the sheriffs of those counties, in making their returns, "besought the governor not to charge their poor counties with more delegates than they used to have:" and hence but two delegates had been summoned from each of these counties.—*Upper House Proceedings, Lib. F. F. 172.*





interest and the disposition both of the proprietary and the people, to extend, rather than to abridge this right; and it was not until it was esteemed a privilege, that restrictions were imposed. The first restraint of this franchise was that imposed in 1681, by the ordinance of the proprietary, which confined it to all freemen having a freehold of fifty acres, or residents having a visible personal estate of £10 sterling, within the county. (3) These qualifications were re-established by law, in 1692, and continued by successive acts until the beginning of the revolution; (4) and they were then preserved by the provisional government of 1775.

These restrictions upon the elective franchise, having been thus interwoven with their institutions from a very early period, and not having formed any part of the public grievances, when the struggle of the American revolution began, or at any antecedent period, it was not surprising that the people of Maryland, in their transition from the proprietary to the state government, should still have retained this feature of their institutions, with the objections to which experience had not acquainted them. Just elevated to the rank of an independent republic, and not yet familiar with the principles on which the right of representation in it should rest, they transferred to their new government the system of representation with which they were familiar, and of which these restrictions formed a prominent feature. Hence the original provisions of our Constitution, restricting the right of voting for "delegates," in the counties and city of Baltimore, to freemen above the age of twenty-one years, having a freehold of fifty acres in the county, in which they offered to vote, and residing therein at the time of election; or having property within the State, above the value of thirty pounds current money, and having resided in the county, in which they offered to vote, for one year next preceding the election. The qualifications of voters for delegates in the city of Annapolis, were left to be regulated by the provisions of its charter. (5) Property,

(3) Proprietary's ordinance of 6th September, 1681.

(4) Acts of 1692, chapter 76, 1704, chapter 35, 1708, chapter 5, 1715, chapter 42, and 1716, chapter 11.

(5) Const. Articles, 2nd, 4th and 5th. The inhabitants of Annapolis were also originally entitled to vote for delegates for Anne Arundel county, upon a freehold of fifty acres in the county without the city, (5th section of





age, and residence, being the original qualifications, all *free* persons having these, were permitted to vote, without reference to their citizenship or color. These provisions were continued without alteration, until 1802, when the property qualification for voters was entirely abolished, and the elective franchise was placed under new regulations, applicable as well to the elections in Annapolis, as to those in Baltimore city and the counties. These excluded persons of color, and conferred the right of voting *exclusively* upon "free white persons, citizens of the state, above the age of twenty-one, and having a residence of twelve months next preceeding the election in the city or county in which they offered to vote. (6) In 1810, the constitution was again amended; but all the qualifications prescribed by the amendment of 1802 were preserved, except the necessary residence, which was now reduced to twelve months in the state, and six months in the county or city; and thus remains the qualification of voters to this day, (7) as then established.

It is not necessary to dwell upon the propriety of the material change introduced by these acts. It is no longer a subject for debate in our state. The judgment of the state has long since been passed upon the property qualification, and has pronounced it an unjust and unnecessary restriction upon the elective franchise. Attempts have indeed been made elsewhere, to deduce arguments in its favor, from what is alleged to have been the experience of our state since its abolition; but if they who dwell under our present system, are to furnish the evidence of that experience, the advocates of the property qualification, will not appeal to them for arguments. The best evidence of the experience of the state, is found in the fact, that from the day of the change to the present, no attempt has been made to return to the old order of things. That there have been objectors to it within our state, cannot be doubted; yet where is the system that has not had them? Those who grew up under

Constitution,) but the right was wholly taken away in 1810, by the acts of 1809, chapter 38, and 1810, chapter 49. This was never the case as to the citizens of Baltimore town, who were always excluded by the constitution, from voting for the county delegates. (Constitution, Article 6th.)

(6) 1801, chapter 90, confirmed by 1802, chapter 20.

(7) 1809, chapter 83, confirmed by 1810, chapter 83.



the old *regime*, may object with that disposition, which is natural to man, to prefer the institutions with which his youth was familiar, and to ascribe degeneracy to the present, just in proportion as he himself begins to be numbered with the past. Those upon whom the mantle of aristocracy would fall, were the right restricted, may naturally object to an elective franchise, which is no respecter of persons, and which enters, with impartial foot, the cottage of the peasant, and the palace of the lordly. And there may be those who, in moments of disappointment, prefer the conclusion, that the right of suffrage is too extensive, to the admission, that they themselves may probably be wrong.

Yet there are no well founded arguments against our extended right of suffrage, to be deduced from considering merely what are alleged to be its abuses. The mere abuse of a right is not of itself an argument against its propriety. It must first be ascertained, that it is the natural and direct result of the exercise of the right: and when this is ascertained, it must be contrasted with the benefits which flow from it. And if, as in the present case, the question is between a more and a less restricted right of suffrage, we must not only be satisfied of the existence of abuses peculiar to the extension of the right; but also, that they over-balance the benefits. Were we disposed to follow out the train of reasoning which this contrast suggests, our system could be most triumphantly vindicated. None amongst us will contend, that the right of property is the only right to be protected or secured. The rights of life, liberty, and character, all will admit to be paramount. And if the right of representation be given to protect those who have interests at stake in the community, or are to be affected by its government and legislation, shall none but those who have property to protect, be admitted to its exercise?—This is not contended for; but it is said, that it is an evidence of an interest in the welfare of the community, and that it places its possessor above the reach of all temptations to the improper exercise of the right. It has its benefits: yet, can it always, and does it alone confer the power to exercise this right discreetly? Does it alone evidence an interest in the well being and support of the government? When the hour of difficulty and danger to the commonwealth arrives, those who have property, then claim no monopoly: and the supporters of government, and





the defenders of property, they who have borne the heat and burden of the day, are then found amongst those who have interest enough in the general welfare to stake their lives or liberty in its defence, but are not presumed by such a qualification to have enough to entitle them to a vote.

These notions arise from a misapprehension of the proper basis, upon which the right of representation must rest in republican governments. Such governments have but one surety for the pure and proper exercise of the elective franchise: and that consists in the virtue and intelligence of the people. These are not peculiar to any rank or condition in life: and whilst it is the progressive tendency of our institutions to render intelligence as diffusive as the right of suffrage itself, we shall have reason to rejoice at its extension.—“He and he only is the freeman whom the truth makes free.” Secured by the nature of our institutions against the abuses of this right, we shall find in it the firmest bonds of affection which can bind the allegiance of the citizen. He does not feel himself a stranger in his own land. He sees no privileged orders around him, exclusively directing and controlling a government which is his only for the purposes of submission. He sees, and feels, and knows that is his, at every return of the day which calls upon him to exercise his rights as a free voter. Such days come as political sabbaths, to teach all men the great equality, and to bow down every heart in thanksgivings to the common government which sheds over all its kindly influences: and when the hour of danger to the state arrives, the recollection of these days comes rushing on the freeman's soul, to nerve it for the encounter, and to bare his arm for the defence.

(2) *Qualifications for the office of delegate.*

The qualifications for this office, originally prescribed by our constitution, as to the elections in *the counties and in Baltimore*, were, that the delegate should be above the age of twenty-one years—should have resided in the county or in Baltimore town, for which chosen, for one year next preceding his election—should have real or personal property within the state above the value of five hundred pounds—was not a minister or preacher of the gospel of any denomination—did not hold any other place of profit, nor receive any part of the profits thereof, (except of justice of the peace) nor receive the profits, nor any part of the profits of





any agency for the supply of clothing or provisions for the army or navy—did not hold any office under the United States or any of them—was not employed in the regular land or marine service of this State or of the United States—was not a field officer of the militia—had not been convicted of holding or executing any other office of profit, or of receiving directly or indirectly the profits, or any part of the profits, of any office exercised by any other person, whilst acting as a delegate, senator, member of the council, or delegate to congress—had not been convicted of giving any bribe, present, or reward, or any promise or security for the payment or delivery of money or any other thing, to obtain a vote to be governor, senator, delegate to congress or Assembly, councillor, or judge, or to be appointed to any of these offices, or to any office of profit or trust then created or thereafter to be created in the State. (8)

(8) Constitution, Arts. 2d, 5th, 37th, 38th, 39th, 45th, and 54th. The origin of these disqualifications can be traced either to the antecedent proprietary government, or to the experience of the colony under the provisional government of 1775.

From the colonization until 1650, the right of representation had no regular character. Sometimes the assemblies had the nature of the "Ecclesia" of the Athenians. They were assemblies of the freemen generally, rather than of representatives. Every freeman had a right to be personally present; and this right being a personal privilege, like that of a member of the English House of Peers, he might either appear in person or by proxy, or join in the election of delegates, at his option. When the assemblies were so constituted, the government was a pure democracy; being administered by the people in person. At other times, the freemen were permitted to appear only by delegates or deputies, elected in the manner prescribed by the warrants of election. The three sessions of 1640, and those of July, 1641 and 1642, were of the latter character: the other sessions were of the former, which was the prevailing character. After the commotions of the civil war had ceased, and the government was restored to the proprietary by Cromwell's commissioners, viz, from 1659, the Assembly consisted only of delegates; and from that period, the right of making proxies or appearing personally, wholly ceased. Yet it was not until 1681, that any restrictions appear to have been imposed upon the people in the choice of delegates. By the proprietary's ordinance of 6th September, 1681, the same qualifications were required for delegates as for voters; and these were kept up, as to both, by the same acts, until the revolution. [*Supra notes 3d and 4th.*]

The exclusion of the clergy was founded upon the jealousy of church establishments imbibed under the proprietary government, and the apprehen-



Of these, the original qualifications for this office, some have been wholly removed, and others superseded by new restrictions, aiming at the same object. Those wholly *removed* are, the property qualification, and the exclusion of field officers of the militia; both of which were abolished in 1810. (9) That which excludes for conviction of having held another office or received its profits, whilst a delegate to congress, has *ceased* to exist; for no such conviction can now take place. Such delegates were then appointed by the Assembly, and were required to qualify, by taking an oath or affirmation not to hold or execute another office, or receive its profits; and the disqualifying conviction was founded upon a prosecution for the breach of this oath of office. Since the adoption of the present federal government, the office of delegate to congress, in the contemplation of the constitution, has wholly ceased: the qualifications of representatives under the new federal government, are prescribed by the constitution of the United States; and the oath of office, on which alone such conviction could be founded, is no longer taken. It seems also that the disability, because of conviction for bribery, does not apply to bribery to obtain the present office of representative in congress; which is entirely distinct in its nature, qualifications and incidents, from that of delegate to congress, as established by the constitution. Those which have given place to *substitutes*, relate to holding offices under the United States, or being employed in its service. Upon the adoption of the present constitution of the United States, it might have been questioned whether they could follow with the change, and attach to offices or employments under the new government. To obviate all doubts, an amendment was therefore engrafted upon our

tion that these might be promoted by permitting them to sit in the Assembly. This restriction, although still strictly enforced, now rests upon different reasons. They are now excluded upon the doctrine, which they themselves will approve, that those whose high and holy office is the care of souls, should be wholly secluded from all the turmoils and corrupting influences of political life. The propriety of the other exclusions had been fully manifested in the experience of the colony.

(9) The property qualification, by the acts of 1809, chap. 198, and 1810, chap. 18; and the exclusion of field officers, by the acts of 1809, chap. 65, and 1810, chap. 78.





State constitution in 1792, which provides "that no member of congress, or person holding any office of profit or trust under the United States, shall be capable of having a seat in the General Assembly. (10)

A qualification of an entirely new character was created in 1816, by the act for the suppression of dueling: which provides, that if any person shall challenge another to fight a duel, with any weapon, or in any manner whatsoever, the probable issue of which may be death, or shall accept a challenge to fight, or actually fight a duel, with any such weapon or in any such manner, he shall be incapable of holding, or of being elected to, any office of profit, trust, or emolument within the State. (11) This act has never been adopted as an amendment of the constitution; and as a mere act of ordinary legislation, can have no operation upon offices, such as that of delegate to the Assembly, for which the constitution has prescribed qualifications. Such disabilities as that created by the act of 1816, are not merely disabilities of the offender. They operate as restrictions of the people's right of choice, imposed for reasons personal to the offender. Now the constitution expressly empowers the people to select, as delegates, all persons having the qualifications which it prescribes; yet this law declares, that even these shall not suffice, if such persons have offended against its provisions. It therefore superinduces a qualification unknown to the constitution, and in direct conflict with the right to elect there given. Affirmative provisions in our constitution are always negative and exclusive of all mere laws, which alter or deny the rights they affirm. And in the present instance, as the law of 1816, if valid, would intervene to declare, that although the person proposed has all the qualifications of a delegate required by the constitution, yet the people shall not elect him, unless he is also free from the offences it creates, and thus controls a constitutional privilege of the people by the provisions of a mere law: it can have no efficacy as to this office. It would operate as an amendment to the constitution, and must therefore be adopted as such, before it can be valid.

(10) 1791, chap. 80; and 1792, chap. 22.

(11) Act of 1816, chap. 219.





Upon the above summary of the qualifications for this office it must be remarked, that they fall under two general classes. The first class includes all the cases in which the person is rendered absolutely ineligible: and to this belong the several existing qualifications, which require age and residence, which exclude members of congress and persons holding offices of profit or trust under the present government of the United States, and which disable because of conviction of bribery, or conviction of holding, or executing, or receiving the profits of another office. In all these instances, the persons lying under these disqualifications or disabilities, are declared incapable of being elected to, or holding the office of delegate; and therefore the election of such persons is merely void, and not susceptible of confirmation, by any removal of the disqualifications, before the person elect takes his seat in the house of delegates, or before it is vacated. The disabling consequences of the convictions alluded to, are expressly declared to be permanent; and therefore, under these, no such question can arise: but if the person elect, being under age, or not having the necessary residence, or holding an office under the United States, arrives to full age, or obtains the necessary residence, or resigns his office under the United States, before he takes his seat, or before his seat is vacated, it will not suffice. He was originally ineligible; and no change in his condition can operate to render valid his election. The latter class includes all those causes of disqualification, which merely declare that the person subject to them "shall not have a seat in the General Assembly;" and do not expressly render him ineligible. Of this kind are the disabilities which exclude ministers or preachers of the gospel, and persons holding other places of profit, or receiving any part of their profits, or receiving any of the profits arising on any agency for the supply of the army or navy of the State, or being employed in its regular land or marine service, (although such cases as the latter can rarely arise under the constitution of the United States.) In all these cases, it may be contended, with great force, that if the disability ceases or is removed, after the delegate is elected, and before he qualifies as such, (which constitutes what is called "taking his seat,") the objection ceases with it. These disabilities are now considered merely as creating qualifications consisting in freedom from them:



the examination of their objects and extent, as disabilities, is reserved for another part of this work.

In the elections for the *city of Annapolis*, the *positive* qualifications, or those which relate to age, property, and residence, were originally left by our constitution to the regulation of its charter; (12) and it has been seen, that under that charter, it was only necessary, that the delegate should be an actual resident of the city at the time of election, and should have therein a freehold or visible estate of the value of £20 stlg. (13) By the amendment of the constitution in 1810, all such parts of it as required a property qualification for delegates, were abolished; (14) and as the constitution expressly adopted the qualifications prescribed by the charter, as constitutional qualifications for the delegate elections in that city, and the charter itself was then expressly made subject to alteration by the legislature, at pleasure; (15) this property qualification, although regulated by the charter, must be considered, as having been established by the constitution, and repealed by the amendment. Hence the qualifications for delegates from this city are peculiar only in one respect. In the counties and the city of Baltimore, a residence in the county, or city, for twelve months next preceding the election, has always been required by the constitution; but the charter of Annapolis, which is in this respect unchanged, merely requires that the person elected should be an actual resident at the time of election. The disqualifications which exclude ministers of the gospel, persons in office under the United States, persons holding another office or receiving its profits, and persons convicted of bribery, or of holding another office or receiving its profits, apply as well to the elections in this city as to those in the counties or Baltimore. The power to elect delegates qualified agreeably to the charter, does not exclude disabilities, which expressly apply to the office of delegate generally, and are established to secure its purity.

(3) *The manner of election.*

The time, place, and manner of holding the elections for delegates, were originally regulated by the constitution; and the

(12) Const. art. 4th.

(13) *Supra*, page 255.

(14) 1809, chap. 198; and 1810, chap. 18.

(15) Bill of Rights, art. 37.





constitutional system for these elections was of the simplest nature. The time of election (which is yet unchanged,) was the first Monday of October in each year. There was but one place for holding the election in each county and city; and this place was, for the counties, their respective court houses; and for the city of Annapolis and Baltimore town, such as might be selected by their judges of election. The judges of these elections were, for the counties, their respective sheriffs, or, in case of sickness of the latter, their deputies: for the city of Annapolis, its mayor, recorder, and aldermen, or any three of them: and for Baltimore town, its commissioners. These judges were empowered to adjourn from day to day; and to keep the polls open for four days, if necessary: and upon the closing of the polls, they were required to make out, subscribe, and transmit to the Chancellor of the State, a full return of the result. (16)

This system remained without alteration until 1799, except as to the holding of the elections in Baltimore; in which, upon its erection into a city, the mayor and second branch of its council were made the judges of election. (17) It was soon found, that the designation of but a single place for voting was attended with great inconvenience to the voters; that it opened the door to management and fraud; and that in the more extensive and populous counties, it sometimes operated as a denial of the elective franchise. Hence, in 1799, all those parts of the constitution, which related to the judges, time, place, and manner of holding these elections, were wholly repealed; and these subjects were left to be regulated by ordinary legislation. (18) At the same time, an entirely new system was established by *law*; under which, the counties were divided into election districts, and correspondent changes were made in all that related to the conduct of these elections. From that period to the present, they have remained subject, in these respects, to ordinary legislation. (19) It is now our purpose to exhibit the present regu-

(16) Const. arts. 2d, 3d, 4th, 5th and 6th.

(17) Act of 1797, chap. 57, confirmed by 1798, chap. 2.

(18) Acts of 1798, chap. 115, and 1799, chap. 48.

(19) Act of 1799, chap. 50, succeeded by the act of 1805, chap. 97; which latter act, and its supplements, constitute the existing election laws of the State.





lations of the system thus introduced, so far as they are applicable to the elections in the counties. Those which relate to the elections in the cities of Annapolis and Baltimore, will be separately considered. Pursuing the natural order of the subject, we shall examine severally—the authority to hold these elections—the time, place, and notice of them—the manner of conducting them—and the proceedings subsequent to the closing of the polls.

Every county in the State is divided into election districts, varying in their number, to suit the convenience of the people of each county. For each of these districts, three judges of election are annually appointed. The power of appointing these judges was originally vested in the county court; but in 1801 it was transferred to the levy court; and to the latter the power still belongs, except in those counties where commissioners have been substituted for the levy courts. (20) In Baltimore, Cecil, Harford, Anne Arundel, Washington, and Alleghany counties, county commissioners have taken the place of the levy courts; and therefore, in these counties, the appointment of these judges has devolved upon the commissioners. The regular appointments must be made between the first Mondays of April and August in each year; but vacancies may be filled at any time. (21) Vacancies arise not only from death and resignation, but also by removal out of the district, or from any cause which may, in the opinion of the levy courts or commissioners, constitute a disqualification. (22) The persons appointed must be residents of the district for which they are appointed. (23) The appointment being made, the clerk of the levy court or of the commissioners appointing, is required to make out and deliver to the sheriff of the county, within five days after appointment, each appointee's warrant for his office; and this warrant must be de-

(20) 1801, chap. 74, sect. 22d; and 1805, chap. 97, sect. 6th.

(21) 1805, chap. 97, sect. 6th. But in St. Mary's county, by the act of 1807, chap. 23, they are to be appointed annually in August. In the substitution of commissioners for the levy courts, the duties of the latter, as to the time and manner of appointing these judges, have been cast upon the former without change.

(22) Same.

(23) Same.



livered by the sheriff within ten days after its receipt, to the person appointed, or left at his place of abode, under a penalty of fifty dollars for a neglect of their respective duties on the part of either of these officers. (24) Any one judge of election has power to hold the elections; but if all neglect to attend, and one hour has elapsed after the time prescribed by law for opening the polls, the justices of the peace present, or any one justice, if but one present, may choose three judges of election for the particular occasion: and if no justice be present, they shall be chosen by ballot by a majority of the voters present. (25) Although these appointments are annual, yet it is expressly provided that the appointees shall hold their offices until a new appointment. (26) Hence it is manifest that no possible case can arise, so long as there are voters, in which there will be a failure of the power to hold these elections.

The time for holding these elections, is, and has been ever since the adoption of the constitution, the first Monday of October in every year. In each election district there is a particular place for holding the elections, which was either designated at the time of locating the district, or has since been established by law. Yet, although the time and place of these elections are thus rendered definite and notorious, it is the duty of the sheriffs of the several counties, under a penalty of fifty dollars, to give notice of them in and for their respective counties every year, by advertisements set up, at least three weeks before the election, in each election district. (27)

In conducting the election, the first step is, the appointment of the clerks of the election, and the qualification of the judges and clerks. There are two clerks of election for each district, who are appointed by the judges, who must be above the age of twenty-one: and who are bound to serve, when appointed under a penalty of ten dollars. (28) The qualification of the judges and clerks consists in the oath of office, or affirmation, prescribed by law:

(24) 1805, chap. 97, sect. 6th.

(25) Same, sect. 8th.

(26) Same, sect. 6th.

(27) Same, section 4th.

(28) Same, section 10th.





which must be taken by the judge before he receives any vote, and by the clerk before he enters any vote upon the polls. (29) This oath or affirmation must be administered to the judges, by some justice of the peace, or by a clerk of the election if he has qualified and no justice is present: and to the clerks, by one of the judges, or by some justice of the peace: and a certificate of its administration must be signed by the person administering it, and annexed to the polls. (30) The duty of the clerks consists in recording the names of the voters: and the votes are entered by each clerk, so that they are mutual checks. It is the duty of the sheriff to provide a ballot box, and a poll book for each clerk for the entry of the votes. (3)

Every judge of the election is a conservator of the peace, during the pendency of the election; and may commit for breaches of it. He may also issue warrants, in the name of the State, to recover the penalties incurred by those, who, having voted offer to vote again at the same election in the same district or county, or who offer to vote, in any name not their own, or in the place of another person of the same name, or in any district in which they do not reside: and in all such cases, he may try the cause, and adjudge the penalty. (32)

There are also further guards of the purity and freedom of elections, in the penalties inflicted upon various acts calculated to interrupt or subvert them. Officers commissioned or non-commissioned, having the command of any soldiers, quartered or posted within the State, are prohibited from mustering or embody-

(29) 1805, chapter 97, section 11. The oath or affirmation of the judge is simply that he will permit all persons to vote at the election to be held by him, who in his judgment are legally entitled to a vote: that he will permit none to vote whom he does not consider so entitled: and that he will in all respects discharge the duties of his office according to the best of his knowledge, without favor or partiality. That of the clerk is generally, "That he will faithfully and without favor, affection, or partiality, discharge the duties of his office," &c.

(30) 1805, chapter 97, section 11; and 1828, chap. 159.

(31) 1805, chap. 97, sections 5th and 10th.

(32) 1805, chapter 97, sections 6th and 25th. There is a special power given to the judges of election in Cecil county, to appoint two constables, for their respective districts, for the preservation of the peace on the day of election. 1823, chap. 122.





ing any of the said troops, or marching any recruiting party, within view of the place of election, during the time of holding the election, under the penalty of one hundred dollars. (33) Candidates, or other persons practising any force or violence, with intent to influence unduly, or to overawe, hinder, or interrupt any such election, are subject to indictment in the County Court: and may be fined any sum not exceeding two hundred and fifty dollars, and also imprisoned any time not exceeding fifty days. (34) Candidates, or other persons, at any time before or on the day of such elections, giving, bestowing, or directly or indirectly promising, any gift or reward to secure any person's vote, or keeping or suffering to be kept any house, tent, booth, or other accommodation, in any part of any district, at any time during the day of election, and before its close, at which victuals or intoxicating liquors shall be gratuitously furnished to voters, are subject to indictment in the County Court, and a punishment by fine not exceeding five hundred dollars, and by imprisonment not exceeding six months. (35) Voters who have voted once and offer to vote again at the same election in the district or county, are subject to a penalty of ten dollars: and persons offering to vote, in any name not their own, or in the place of any other person of the same name, or in any district or county in which they do not reside, are subject to a penalty of twenty dollars: and in all these cases, as these are offences which ought to be instantly repressed, the penalties may be immediately recovered, by warrant issued in the name of the State, by any justice of the peace, or judge of the election. (36) Persons voting twice at one election, are subject to punishment by fine not exceeding forty dollars, and imprisonment not exceeding one month; and persons offering more than one ballot with a fraudulent design, incur a penalty of twenty dollars: the punishment in both these cases, being enforced by indictment in the County Court. (37)

(33) 1805, chap. 97, sect. 28.

(34) 1805, chap. 97, sect. 27.

(35) 1805, chapter 97, section 29, and 1811, chap. 204. There is besides the constitutional punishment for bribery by candidates, which upon conviction for this offence, forever excludes the offender from any office of profit or trust in the State. Const. art. 54, and *supra* page 449.

(36) 1805, chap. 97, sect. 25.

(37) 1805, chap. 97, sections 12th and 26th.



The polls are to be opened at nine o'clock, A. M., and closed at six o'clock, P. M. The voting is by *ballot*, on which must be written or printed, the name of the person voted for, and the purpose for which the vote is given plainly designated. The ballot is received by a judge of election, by whom it must be deposited, without examination, in the ballot box, where it must remain until the closing of the polls: and any attempt by such judge or any other person, to discover the contents of a ballot by opening or unfolding it, subjects him to a penalty of fifty dollars. (38) In all cases where there is any doubt as to the right to vote, it is the duty of the judges to scrutinize it: and in doing this, they are empowered to examine on oath or affirmation, the person offering to vote, or any other person. (39)

The *viva voce* mode of voting was originally prescribed by the Constitution: and it continued to be the mode of voting in this State, until 1801, when it was superseded by that of voting by ballot. This change was introduced by the same Act which swept away the property qualification of the voter: and was intended to take away the indirect, whilst the latter took away the direct influence of wealth upon the elective franchise. Both changes appear to have sprung from the experience of the State during the national revolution which elevated Mr. Jefferson to the Presidency. There is a great contrariety of opinion, about the comparative excellence of these two modes of voting: yet the present appears to be better adapted to the nature of our government. The contrary doctrine is maintained by Montesquieu, upon principles which do not accord with it. "The people's suffrages," (says he) "ought to be public, and this ought to be considered a fundamental law of democracy:" and the reason he assigns, is, "That the lower orders of people ought to be directed and restrained by those of 'higher ranks.'" This is the very reason why it is excluded by our laws: and the assignment of it shews, that they have pursued the proper mode of excluding what they held to be an improper influence. A republic rests for its true basis upon the virtue and intelligence of its citizens: and these are the only proper guides to direct them in the exercise of the right of suffrage. Such a reason might apply to a Constitution,

(38) 1805, chap. 97, sect. 12.

(39) 1819, chap. 174.





by which the lower sort of people (as Montesquieu terms them,) are regarded as mere machines, destitute of all sense of self-interest in the administration of the public affairs, and impelled to a proper exercise of the elective franchise, only by the instructive example or overawing influence of the higher orders of society; but it can have no place in a government like ours, where all persons having the right of suffrage, are not only presumed to be self-willed in the exercise of it, but where also every tendency of our government, and of all our institutions, is to form that will aright. Why give the right of suffrage at all, if the voter is to consult the will or bow down before the influence of others, in its exercise? Where it is so exercised, the government may be in form a democracy; but it is in point of fact an aristocracy, which mocks the many with the show of power, whilst the substance is in the hands of the few. Where persons act in a representative capacity, the votes given by them should be open to the scrutiny of their constituents: but there exists no such responsibility, to require or sanction such a scrutiny; in the ordinary exercise of the elective franchise. The proper exercise of this franchise requires but that which is open to every understanding, a knowledge of the character, sentiments, and habits of those, who are to be selected for the protection of the public interests. It has nothing to apprehend from the free will of the voter, or the regulations which are calculated to protect it: but it has every thing to fear from external influences, which may tend to corrupt it.

When the polls are closed, the ballot box must then be opened by the judges of election, or some one of them, and the ballots taken out and read aloud in the presence of those who may choose to attend: and as they are read, the votes must be entered by the clerks on their poll books, so that the number of votes given for each candidate may distinctly appear. During the counting of the ballots, if there should appear upon the ballot more names than there ought to be, or if two or more of them are deceitfully folded together, or if the purpose for which the vote is given is not clearly designated on the ballot; in all such cases, the ballots must not be counted. After the counting of the ballots is completed, and the number of votes given for each candidate is ascertained, the judge or judges of election present, are required to give two certificates of the number of votes given for each candi-





date ; in which shall be stated, the office for which he received the votes, and the number of votes, in words at length ; and these statements shall be made on the two poll books, and shall be attested by the clerks of election, or one of them. The 14th section of the act of 1805, chap. 97, prescribes a form, according to which or to the like effect, (says that section,) these certificates must be. All that is absolutely necessary in the certificates is, that they should state the authority of the persons certifying to hold such election, and whence derived—the county and district in which, and the time and place at which held—the qualification of the judges, and the appointment and qualification of their clerks—the opening and closing of the polls at the time prescribed by law, and the election for which they were opened—the counting of the ballots and the result of the count. Any certificate which sets out these particulars is substantially good. (40)

Thus the result of the election is ascertained in each election district in the county ; and it only remains to determine the aggregate result for the county, and to prepare and transmit the final return. For this purpose, the presiding judge of election in each district, or in case of his inability, one of the other judges, is required, under a penalty of five hundred dollars, to attend at the place of sessions of the County Court with the poll books for his district, on the second day after the election : and the judges from the several districts so assembled, are then required to make out two certificates or final returns of the election. The Act directing this, requires that these certificates should shew the number of votes given for each candidate : and yet the form for the return of delegate elections, prescribed by it, merely states the persons having the greatest number of legal votes. The better form would be, to set out the number of votes given for each

(40) 1805, chap. 97, sections 13th and 14th. For their services in the conduct of the elections generally, the judges and clerks of election are allowed each, under the general law, *four dollars* for each day's attendance in receiving votes, or making returns : which is levied with the county or city charges, as the case may be. (1805, chap. 97, section 31.) In Allegany and Baltimore counties, this allowance is reduced to two dollars per day : (1810, chap. 46, and 1827, chap. 83.) In Dorchester, to three dollars. (1827, chap. 16 :) and in Baltimore city, the compensation for making returns is wholly taken away. (1829, chap. 7.)



candidate; and then in the declaring or returning clause, to name the persons elect. If any of the judges fail to attend on the day assigned, the other judges in attendance, may adjourn from day to day until the attendance of the whole can be procured. These final returns being completed, the judges must address one of them to the Chancellor, and then enclose it under cover, directed to the Governor and Council, and endorsed, "on public service;" and must place it in the next post-office within one day after their meeting. The duplicate must be lodged together with the books of polls, within the same time, with the clerk of the county, who is required, under a penalty of one hundred dollars, to make out a true copy under seal of office, and transmit it to the Governor and Council in the same manner. Thus the returns are ready to be delivered to the House of Delegates upon its assemblage: to which it alone belongs to determine all that relates to the election and qualifications of its members. (41)

*(4) Peculiarities of these elections in the cities of Baltimore and Annapolis.*

The qualifications for voters and delegates, in these cities, have already been considered; and it remains only to examine the mode of proceeding in their delegate elections, where it differs from that prescribed for the counties.

These elections for Baltimore town were originally held by its commissioners; but after its erection into a city, this duty was transferred to the mayor and second branch of the city council, with whom it remained until 1799. (42) Until this period, there had been but one place for holding the elections in this city as well as in the counties; but a new system was then adopted for both. The eight wards, into which the city was divided for the election of its city council, were made election districts for the delegate elections; and the judges of elections for members of the first branch of the council then became, and have ever since been, judges for the latter elections also. (43) In 1817, the number of the city wards was enlarged to twelve; and for the future, the wards, whatever might be the change in their num-

(41) 1805, chap. 97, sections 15th, 17th, 19th, and 20th.

(42) Const. art. 6th; and act of 1797, chap. 57.

(43) Acts of 1798, chap. 115; and 1799, chaps. 30 and 48; 1805, chap. 97, sect. 22.





ber or limits, were established by the constitution as the election districts for these and other elections. (44) The time of holding the election is the same as in the counties, and the notice is given by the mayor of the city; but the time and manner of the notice appears to be discretionary, except in elections to fill vacancies. (45) In all that relates to the duties and powers of the judges of election, in opening, conducting, and closing the election, and in ascertaining and reporting the result; and in all the sanctions which enforce or sustain these, the elections for this city conform entirely to those for the counties.

In Annapolis, the delegate elections are still held by the mayor, recorder and aldermen, or any three of them, who designate the place of election, and return the result to the Chancellor. (46) They are peculiar only in the power to keep the polls open for four successive days. This original power under the constitution has never been taken away; although some of our laws seem to have contemplated its abolition. The amendment of the constitution, in 1799, referring the time, place, and manner of elections to the regulation of ordinary laws, did not extend to the elections in Annapolis; and therefore the election laws since passed, which restrict the time of election to a single day, being mere laws and not amendments of the constitution, have not affected this power.

(5) *Elections to fill vacancies.*

Vacancies arise by death, refusal to serve, resignation, removal out of the State, or from some of the causes already described as incapacitating for the office of delegate. (47) When they occur and are ascertained by the house, a warrant of election to fill the vacancy must be immediately issued by its speaker. This warrant goes to the sheriff of the county, or the mayor of the city of Baltimore, or the mayor, recorder, and aldermen of Annapolis, as the case may be. The election must be held within fifteen days after the receipt of the warrant; and notice of the time and place of holding it must be given by the person or persons to whom the warrant is directed. In Annapolis and

(44) 1817, chap. 51; and 1818, chap. 87.

(45) 1805, chap. 97, sect. 23.

(46) Const. art. 4th.

(47) Const. art. 7th, and *supra*, 448.





Baltimore, this notice is ten days, exclusive of the day of notice and the day of election. In the counties, it has been reduced to eight days exclusive. The manner of giving it is discretionary in Annapolis and Baltimore; but in the counties, it must be given by advertisement, set up at the most public places in each district. It is also the duty of the sheriff of any county, or the mayor of Baltimore, upon the receipt of any such warrant, to cause a copy of it to be served on each of the judges of election at least three days before the day of election. Elections to fill vacancies are, in all other respects, conducted in the same manner as the regular elections. (48)

(6) *Distribution of the right of representation.*

The house of delegates consists of eighty members, of whom four are chosen by each of the nineteen counties of the State, and two by each of the cities of Annapolis and Baltimore.

With reference to the several counties of the State, the principle of our present system of representation in the house of delegates is "perfect equality, because of distinct county interests, without regard to difference in territory or population." Nor is there any proportionate representation of the latter in the Senate. Hence our Assembly has not, strictly speaking, any popular branch, any branch which may be called the image of the people. This system imparts to the State the character of a confederacy of counties; and unless so regarded, it has no governing principle. But when we recur to the circumstances under which it was adopted, we discover that its form is merely arbitrary and conventional. In our examinations of human institutions, in whatever age or under whatever circumstances they originated, and however rude in their form and disproportioned in their parts, we are constantly in search of some general and governing principle to account for their existence. We will have a reason: and that reason must be a principle. Yet experience should teach us, that human institutions, for the most part, spring from and are moulded into form by adventitious circumstances, and are not the creations of a principle. The forms of government are very generally, the results of fortuitous circumstances, the effects of compromise, or the work of gradual concessions or assumptions of power. The history of the world has exhibited but few instances, in which

(48) 1805, chap. 97, sects. 23 and 35; 1823, chap. 213; and Const. art. 4th.



the social compact was more than a mere theory, or in which men, in moments of tranquillity and reflection, have cast off all their political connexions, have returned to a state of nature, as preliminary to the establishment of a new and better state of society, have devoted themselves to the investigation of the true principles of government, and have remodelled their government upon those principles, without reference to their previous condition. Attachments to forms under which we have long lived, partialities for customs and prejudices, devotion to familiar feelings, and subserviency to jealousies, will cling to us, even in the transition from an old to a new government.

Knowing this, we have a clue to the causes of our present delegate system, without being driven to a vague and fruitless search for some principle on which to rest it. We have seen that, under the proprietary government, for a long time anterior to the revolution, the same equality of county representation prevailed, and the same number of delegates were allotted to each county. (49) This was the system under which the framers of the constitution had grown up, and with which they were familiar, as interwoven, not only with their own institutions, but also with those of the parent country. It was also accommodated to their shore and county jealousies; and being thus identified with the feelings and habits of the people, it is probable that any attempt to repudiate it, and to substitute in its stead a

(49) Until 1650, the delegates were elected for hundreds or settlements; and the warrant for each Assembly specified the number to be elected for each hundred. There was no regular delegate system before this period; and perhaps this arose from the existence of the right then generally conceded to the freemen of appearing in the Assembly in person or by proxy. It was not until 1659, when the Lower House was made to consist only of delegates, that its organization became regular. At the session of 1659, four delegates were called from each county; and from this period until 1681, with one exception, the summons permitted the election of two, three, or four delegates in each, at the option of its people. In the latter year, the number was reduced to two, by the proprietary's ordinance; but in 1692, after the establishment of the royal government, the constitution of the Lower House was regulated by law, and four delegates were again allotted to each county. The right of representation thus established upon the basis of equality amongst the counties, existed without alteration until the American revolution.





representation based upon territory, property, or population, or on a ratio compounded of any or all of these, would have alienated the affections of many of the inhabitants, would have roused the jealousies of the smaller counties, and would have left the State the prey of internal dissensions, at a moment when all her energies were required in her struggle for independence. (50) Our constitution was framed at a very early period of this struggle; and in its formation, it was necessary to regard sectional rights and feelings with the utmost tenderness, and to omit nothing in the effort to bring them into harmonious concert against the common enemy. Like Solon's laws, it was the best of which their condition would admit; and formed, as it was, whilst the enemy was at the door, we can readily account for the retention of the old system of representation.

Frequent and vigorous efforts have been made to change this system; in some instances, by attempting to substitute one founded upon the basis of population; and in others, by proposing merely to enlarge the representation from Baltimore, so as to place it on an equality with the counties. All the attempts to substitute the basis of population, have hitherto proved entirely fruitless; nor have they ever been sustained by such a vote as to encourage the belief, that they will ultimately be successful. There are two prominent causes which always have operated, and probably always will operate, to prevent such a change: and these are, the unequal distribution of the population of the State amongst the counties and the two cities, and the supposed existence of distinct shore interests, with its train of shore jealous-

(50) The prevalence of shore jealousy is strikingly manifest in some of the proceedings of the Convention which adopted our State government. A proposition was actually made in that convention to insert an article in the Declaration of Rights, acknowledging the right of either shore to separate from the other, when it should deem it to be for its interest and happiness. It was amended so as to give this right, whenever sanctioned by a majority of the voters in every county on the shore desiring to secede; and in this amended form, it actually received seventeen votes, all of which, save one, were given by Eastern Shore delegates. Out of twenty-one Eastern Shore members voting on this proposition, sixteen were for it, and but five against it; of the twenty-six Western Shore members voting on it, twenty-five were against it, and one for it.

[*Journals of Convention, 3d Nov. 1776.*





sies. A very slight observation of the local peculiarities of the State will convince us, that its population will probably, for a long time, be so distributed, as to render a majority of the counties jealous of any change which would look to this basis. Along the shores of the Chesapeake Bay, there always has been a considerable direct commercial intercourse with other states, and with other cities; yet the operation of this is not likely to raise up, within the State, a commercial rival of the city of Baltimore. The object of such a commerce has been, and will be, principally, to be their own factors: and to supply themselves with such merchandize as they want for their own consumption. Baltimore is, therefore, destined to remain for a long time, and, we trust, for ever, the commercial emporium of the State; and if she makes a proper and timely use of all the local advantages with which she has been so liberally endowed by Providence, she will also be the great commercial emporium for the western states. Her population, even now, is more than one-sixth of that of the whole State; and is likely to increase in a greater ratio than that of the counties. It will also be perceived, in contrasting the several counties of the state with each other, both as to their past and present condition, that there are three or four, whose population now greatly exceeds, and is likely to continue to exceed, that of the rest. Without even looking to the effect which will probably be produced upon the three extensive counties of Frederick, Washington and Allegany, by the projected improvements leading through them to the west, it will be seen, that the preponderance of population in three or four counties will be likely to continue because of their territorial extent, even if the causes of the improvement or decline of the State were to operate equably upon all sections. The objection, therefore, which has hitherto been urged against a representation based on population, that it would place the power of the State in the hands of the city of Baltimore, and three or four of the largest counties of the State, is likely to remain open to such objectors; and so long as this is considered a sufficient reason, no change will be effected. The truth is, that a majority of the counties, who now wield a majority of votes in the house of delegates, will, in a comparative view, always remain small counties, and do not expect to add to their relative weight in the legislature, by such a change.



Some of them believe, that the allotment of delegates according to population would not increase their representation; and others, that theirs will be greatly diminished: and they therefore make a common cause against a change, by which none expect to gain, and most of them fear a great loss of legislative power. Those who have power, be they the majority or minority, rarely surrender it voluntarily; and always conclude that it is as safe in their hands as in those of others.

It is also urged as an objection to any alteration of the present system, that it would destroy the present proportions in the distribution of the legislative power. In both houses of Assembly, the power of the Eastern Shore is to that of the Western, as two to three; and the members from the former are always opposed to a system, which would so materially reduce their shore power.

These considerations, so long as they are sustained by the notion of distinct shore interests, and by those singular apprehensions of Baltimore influence, which have so long prevailed in a State of which she is the pride and ornament, are calculated to give permanency to the present system. There is, however, one alteration of it, relating only to the representation of the city of Baltimore, which, it is believed, the justice and magnanimity of the State will yet accord to her. This proposes merely to increase the number of her delegates to four, so as to place her on an equality with the counties. It received the sanction of the legislature at the session of 1824, but was not confirmed, as the constitution requires, at the ensuing session. It was the writer's lot to participate in the discussion before the legislature, which led to the passage of the bill of 1824; and in those afterwards elicited by its submission to the people; and thus to become familiar with all the feelings and motives of opposition to the change proposed by that bill. On that occasion it was resisted, not so much on account of its immediate objects and effect in raising the representation of Baltimore to an equality with that of the several counties, as for its supposed tendency to extend the hand of innovation to the whole system, and to strengthen her claims for a further increase. Without regarding it as the beginning of innovation, it was difficult to find an argument of justice or expediency, upon which the bill could be re-





sisted. By the very grant of a partial right of representation, this city is admitted as a distinct member of the quasi-confederacy, having distinct interests: and these, as the interests of a great and growing commercial city, are peculiar in their nature, belong to a larger population, exceed in value those of any county of the State, and require more legislation. Hence whatever basis may be adopted, be it population, or distinct interests, or property, or the necessity of peculiar and frequent legislation; in all, she is at least confessedly equal. And it is most manifest from the provisions of that article of the constitution, which gives her her present representation; and declares that it shall cease, if her population should so decrease, as that the number of her voters for seven successive years shall be less than one half of those of some one county of the State, until it shall regain that number of voters; that the framers of that article never had in prospect, even the state of wealth, prosperity, and population, to which she has now attained. (51)

Yet whilst the present system is thus guarded and fenced about by power and feeling, which are likely to insure its continuance, the course prescribed by duty and policy to all sections of the State is obvious. The constitutional mode of amendment is at all times open, and proper to be resorted to; but mere murmurs and revilings can never answer any other purpose than to produce sectional jealousies and heart-burnings, to the prejudice of the whole. In most of our reasonings about the forms of government, we are too apt to confound the means with the end. Political liberty and power are treated, as if they were the sole objects of human society; but as used here merely to de-

(51) Const. art. 5th. This clause did not make a part of the constitution, as originally reported to the convention by its committee. It was a part of an amendment to it, proposed in convention by the late Judge J. T. Chase, one of the delegates from Baltimore town, in which this proposition for reduction was accompanied with one for an increase to four delegates, whenever the town should have an equal number of voters with any one county in the State. This proposition was a very fair application of the golden rule: but the convention were content to take its operation in one way only. When it was put to the vote, a division of the question was called: the clause relative to decrease was incorporated into the constitution: and then the proposition for increase, for which the other was a mere purveyor, was rejected by a large majority.





note the degree of our participation in the government, they are the mere instruments by which our civil liberties are secured and protected. We cede a portion of our natural rights, and out of these ceded portions we form a government: only, that through its instrumentality, we may secure to ourselves the full and efficient enjoyment of our rights of person and property. Hence, in republican governments, the power which is to be exercised for the benefit of the people, is made to spring from them: because thence to derive it, is to insure its most beneficial exercise in the accomplishment of the objects for which it was instituted. And whilst it in the main accomplishes these objects, it is useless to jeopard the substance by wrangling about the forms. There may have been moments, in which the rich and various resources of the city of Baltimore and the larger counties have been peculiarly operated upon by State taxation: yet in the most of these cases, the tax was not peculiarly imposed upon them, but became peculiar in its operation only because the narrow resources of other sections denied to them the possession of such objects of taxation. Discrimination in taxation will always be the result of the most uniform and impartial system, where wealth is so unequally distributed: and at last it will be found, that those who contribute most to the support of government, are those who enjoy most of that security which it imparts to the possession of property. In the recent encouragement and aid given by the State to the city of Baltimore, in the stupendous work of improvement which she has projected and is now conducting with such vigor and success, we have an earnest of good feeling, which deserves to be cherished in remembrance. And if we look through the mass of legislation peculiar to her, we shall find her favoured in all her institutions. Under such circumstances, a course of generous concession and forbearance on all parts, will probably rid us, in a few years, of those sectional jealousies, and heart-burnings, which have so long infested our State: and she will become what she should be, *one and indivisible*, in the great work of self-improvement. And to the city of Baltimore, whose interests are *bound up with those of the State*, it especially belongs, to remember the rule of policy—

“Be to her faults a little blind,  
And clap the padlock on her mind.”



In passing from this subject, it will be proper to advert to the peculiar organization of the Senate, as one which will of necessity be remodelled, if the representation of the House should ever be based on population. The Senate consists of but fifteen members, who are chosen by the electoral college from the State at large. By consequence, out of the nineteen counties and two cities, there must always be at least six without any representation whatever in the Senate: and as the electors or the Senate (as the case may be,) may always choose from the State at large, there is no constitutional security for any county or city, that she shall be represented in that body. Now, it will be conceded, that each county ought to be assured of a representation in some one branch of the legislature; and that having different resources, different wants, and distinct county interests, she ought not only to be represented, but her representation should be of such a character, as to explain her wants and interests, and to sustain her rights against the unjust aggressions of other counties. The approved principle with regard to the constitution of a legislature, seems to be, that where the several members of a community, whether counties as in the State Governments, or States as in the General Government, are unequal in territory, wealth, population, and all that constitutes influence, and are clothed with distinct interests; there should be lodged in some branch of the legislature, a checking power, for the protection of the smaller members. Our legislature presents anomalous features. The county representation, and the checking power for the protection of county interests, exist only in the house of delegates; and if its present organization were changed, it would infallibly lead to a change in that of the Senate, so as to give a senator to each county and city. The results of this amended system would not, therefore, vary very materially from those of the present; and so far as the city of Baltimore and the larger counties are concerned, it may well be questioned, whether they would gain by the change. The magnanimity of the State has generally accorded to the city of Baltimore two senators, so that in that body she has two-fifteenths of the whole power: which is nearly the proportion her population bears to that of the State. And this power is more valuable in this small body, than a similarly proportioned power





would be in a body so numerous as the House of Delegates; and can there be exercised most advantageously for her protection.

(7) *Tenure and compensation of the office of delegate.*

The office of delegate endures for one year from the time of election: if not sooner vacated, by death, resignation, removal out of the State, or some of the constitutional causes of disqualification already described. As a suitable compensation for his necessary expenditures, each delegate is entitled to receive from the public treasury, four dollars per day for each day's attendance as such at the seat of government, and a fixed allowance for itinerant charges, resting upon usage cotemporaneous with the government. (52)

(52) Acts of 1796, chap. 41, and 1811, chap. 156. The *itinerant charges* given to the delegate by usage, consist in the allowance of a *per diem*, for every twenty miles of travel from the seat of government to the seat of justice of his county as computed at the time at which the usage was established, and also of a small and fixed allowance for the expenses of ferriage.





## CHAPTER IX.

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### THE ORGANIZATION OF THE SENATE.

IN examining the organization of the Senate, we shall consider—(1) The election of the electors of the Senate—(2) Their proceedings in the choice of a Senate—(3) The qualifications for the office of Senator—(4) The mode of filling vacancies in the Senate—(5) The tenure and compensation of the office of Senator—(6) The nature and tendencies of the present structure of the Senate.

#### (1) *The election of the Electors of the Senate.*

The Senate of Maryland is not chosen directly by the people, but by an electoral college, consisting of forty members, of whom two are chosen by each of the counties, and one by each of the cities of Annapolis and Baltimore. The Electors must have the qualifications necessary for delegates; and are elected by those only, who are entitled to vote for delegates. The elections are held on the first Monday of September in every fifth year, reckoning from the first Monday of September, 1806. (1) They are held at the same places, in the same manner, and by the same judges, as the delegate elections: and all the preceding remarks, as to the manner of opening and conducting the latter elections, the duties of the judges and clerks, the provisions to secure the purity and freedom of elections, and the manner of ascertaining the result at each poll and the aggregate result in the county or city, are here applicable, varying the proceedings only so as to designate the purpose of the election. There is a special form of return for the election of electors: but it is substantially the same with that for the delegate elections, except as to the time and purpose of the election. (2) In the

(1) Const. art. 14, and 1805, chap. 97, sect. 9th.

(2) 1805, chap. 97, sect. 15th, and supra, 455 to 463.



counties and Annapolis, the right to their electors is given absolutely: but that of the city of Baltimore endures only as long as her right to elect delegates, which, as we have seen, ceases, whenever her inhabitants shall have so decreased, that the number of her voters for seven successive years shall be less than one-half of the number of voters in some one county of the State, but returns as soon as her voters shall have again increased to that number. (3)

(2) *Their proceedings in the choice of a Senate.*

The Electors thus chosen are required to meet at the city of Annapolis, or the place of the Assembly sessions, wherever that may be, on the third Monday of September next ensuing their election, to proceed to the election of the Senate. (4) Any twenty-four of them constitute a quorum, and may go into the election: but before the electors can act as such, they must qualify in the manner prescribed by the constitution. (5) If there be any doubts or contest as to the election of any person returned or appearing as an elector, these must be determined before the college goes into the election of the Senate; and when such contests arise, the college is the exclusive judge of the qualifications and election of its own members, and shall admit, as elector, the person qualified and appearing to them to have the greatest number of legal votes. (6)

When the members have qualified, and all cases of controverted elections are determined, the college must then proceed to elect fifteen senators, of whom nine shall be residents of the Western, and six of the Eastern shore: but this distribution being respected, they are subject to no other restriction, in choosing amongst persons qualified for the office of senator. The senators are chosen for shores, without respect to counties or other

(3) Const. art. 14th, and supra.

(4) Const. art. 15th.

(5) This qualification consists in taking the oaths of office, and the test declaration. Their oath of office is prescribed by the constitution, as amended by the act of 1822, chap. 204. The test declaration consists in making and subscribing a declaration, of belief in the Christian religion, or, if a professor of the Jewish religion, of a belief in a future state of rewards and punishments.—Const. 55, and act of 1824, chap. 205.

(6) Const. art. 17th.





civil divisions; and the college may, at its pleasure, select all the senators for either shore, from any one county. The distribution of them amongst the several counties of either shore, is regulated entirely by its discretion. They are even permitted to select the senators from amongst the members of the electoral college. The election is by ballot; and the senators must all be ballotted for at the same time. Upon the ballot, out of those proposed and ballotted for as senators, the nine amongst the residents of the Western shore, and the six amongst the residents of the Eastern shore, having the greatest number of votes, shall be declared and returned duly elected. If, on the first ballot, two or more persons have an equal number of votes, and it is necessary to exclude some of them, a second balloting shall be had as between these candidates only, before the electors separate; and if on the second ballot there is still an equal vote, the election must be made by lot. The election being completed, the electors must then certify their proceedings under their hands, and return them to the Chancellor. Their duties then cease; and with them, their offices. (7)

(3) *The qualifications for the office of Senator.*

The original qualifications for this office, relative to age, property, and residence, required that the senator elect should be above the age of twenty-five, should have resided in the State for three years next preceding his election, and should have real or personal property within it above the value of one thousand pounds. (8) The property qualification was abolished in 1810; (9) those as to age and residence are still requisite.

The causes of disqualification for this office are the same in all respects, except as to age and residence, with those which exclude from the office of delegate; and it will therefore be sufficient to refer, for these, to the preceding remarks upon the qualifications for the latter office. (10)

(4) *The mode of filling vacancies in the Senate.*

Vacancies in this body arise by death, refusal to serve, resignation, removal out of the State, or from some of the causes of

(7) Const. art. 16th.

(8) Const. art. 15th.

(9) 1809, chap. 138; and 1810, chap. 18.

(10) See page 448.





disqualification already alluded to. When they occur, the right to fill them devolves upon the Senate; which shall, immediately after they occur, or at its next meeting, elect by ballot, in the manner prescribed for elections by the original electors, another qualified person for the remainder of the senatorial term. (11)

(5) *The tenure and compensation of the office of Senator.*

The Senators are chosen for five years, but are liable to removal for the causes of disqualification already described. We have remarked upon these, as constituting original qualifications for the office of Senator or Delegate; and their effect and manner of operation in vacating these offices, when they attach upon their incumbents after election and qualification, will be fully examined in one of the following chapters.

The compensation of the Senator is the same as that allowed to the Delegate. (12)

(6) *The nature and tendencies of the present structure of the Senate.*

In every well organized government, it has always been a cardinal object with its framers, so to constitute its legislature, that whilst it is the ever ready organ of the well ascertained and well regulated will of the people, it is yet, to a certain extent, above the reach of those momentary prejudices and passions, and hasty and short-sighted views, which at times pervade every community. To place the popular will as embodied in acts of legislation above such influences, is one of the most prominent and useful designs in the delegation of legislative power to representative bodies. In extended republics, this is necessary, because of the inability of the people generally to attend in person to its exercise: yet it is recommended by the additional consideration of its tendency to purify the public will. Even in small republics or democracies, such as were some of those of antiquity, where there was no such inconvenience in the exercise of this power by the people in person, it was yet found salutary to delegate it to a select assembly. The utmost excesses, and the wildest anarchy, were found to flow from the exercise of it, by the community in mass. The effects of such a mode of legislation are

(11) Const. art. 19th.

(12) See 472.



strikingly exemplified in the Ecclesia or general Assembly of the Athenian people; which, being invested by Solon with the supreme powers of government in the last resort, deprived the government, by its irregularities, of every thing like uniformity or consistency in the public operations. Some checks were interposed, by the creation of the Senate, and the revival of the Areopagus: yet although its tendencies were thus, in some measure, counteracted, they have always been reckoned amongst the most prominent causes of the downfall of that republic. History is full of illustrations of the truth, that the people, for whose benefit government is instituted, find great advantage in distributing its powers amongst responsible agents, each having a few specific duties to perform, and each constituting a check upon the others.

In the creation of a representative body for the purposes of legislation, there is then a two-fold design. The one is to obviate the inconveniences of a personal discharge of this power by the people; and the other, to filtrate it, and give it a judicious direction. But the mere delegation of this power is not considered sufficient for the latter purpose. It has now become almost an *axiom* in the constitution of a legislature, that it should consist of two branches, the one of which is more permanent and less responsible than the other; and this principle has been adopted in all the best forms of government. Without going at large into the reasons upon which this doctrine of constitutional law rests, it may be proper to advert to a few considerations, which come home to every understanding. Every well organized government is but a system of checks and balances of power. Men cannot safely be trusted with absolute power; nor can a community safely commit themselves even to their own uncontrolled discretion. The great object in the constitution of governments, is to make their leading powers so many antagonist muscles, each in a certain degree independent of the others, and each drawing against a preponderance of power in the others. Hence they have been subdivided into the three great branches of legislative, executive, and judicial powers; and the endeavor is made to preserve their distinct existence, as far as possible, by confiding their exercise to separate agents. Thus each branch is made to watch over and to check the encroach-





ments of the others. The same objects are had in view, in the separation of the legislature into two branches. There is no power of the government which requires so much caution in its exercise as the legislative. The executive and the judiciary, have in general prescribed and definite duties to perform. The legislative, within its range, has no guide but its own discretion; and it is therefore of the utmost importance, that this should be a well regulated discretion. Experience has shown, that nothing conduces so much to this, as its separation into two branches. Each branch is vigilant and scrutinizing as to the acts of the other; and would be useful in this respect, even if the branches were similarly organized.

But their utility is greatly enhanced by giving to them, not only a separate, but also a peculiar existence. The will of the people should always be fully and distinctly communicated to the legislature, and should be brought to bear fully upon it. Hence the necessity of a popular branch composed of members, who are elected directly by the people; who are elected by different sections of the community, and therefore fully understand and represent the various wants and interests of these sections; and who are elected for short periods, and must soon return to the people to account for the deeds done in their office. To give a judicious and steady direction to this will, and to guide it by the lights of experience, another branch has been considered necessary; whose members do not so immediately represent sectional interests, and are therefore less likely to be swayed by these to the prejudice of the community at large; are not so numerous as those of the popular branch, and are therefore selected with more caution, and act under a more concentrated responsibility; are elected for a longer period, and are therefore less likely to be swayed in the discharge of their public duties by considerations personal to themselves. Besides, by the duration of their office, the members of such a branch must necessarily acquire an intimate knowledge of their duties, an acquaintance with the constitution and laws, a familiarity with the forms and objects of legislative proceedings, fixed and uniform principles of action, and, in the general, an aptitude for the discharge of their official duties, which can never be possessed by those, who are suddenly called together from the pursuits of private





life for the purposes of legislation, and can scarcely become familiar even with its forms, before their official character has ceased.

These lines of demarcation indicate, what should be the distinguishing characteristics of the two branches of the legislature. Some have contended that the one ought to represent property, and the other the people; but besides the objection to such a distinction, as long since repudiated by our constitution, and as foreign to the nature of all our institutions; it would manifestly accomplish but few of the objects of the division into branches. These are to be effected, not by a change of the object represented, but by the duration of the office, and the change of responsibility. The only benefit which would result from separate branches, varying only as to the basis of representation, would result from the dominion of different influences, operating as checks upon each other, and producing a legislation compounded of the proper influence of both. But the separation of the legislature into two branches has a higher aim. It seeks to impart to it, a full knowledge of the wants and interests of the people; capacity to discern the measures by which these may be relieved or promoted, and wisdom and moderation in their application; freedom from all partial, temporary, or selfish influences; and an intimate acquaintance with the forms of proceeding. Such designs could not be effected by a mere change of the basis of representation.

In the State of Maryland, there are some peculiar reasons for the existence of such a branch as the Senate. It is scarcely possible to constitute a legislative body, which, unchecked, would be more liable to hasty, capricious, mutable, and inefficient legislation, than our House of Delegates. The defect is not in the members, but in its ever varying constitution. There is no check in the Executive, which is the creature of the legislature, and has no veto. Hence has, in some measure, resulted the very peculiar character of our Senate: which renders it the most aristocratic legislative body known to the Union. There was no checking power elsewhere; and it was perhaps deemed proper, for that reason, to infuse more of it into the Senate, than exists in similar bodies, where there is the further check of the executive veto. A contrast of the characteristic differences of the two branches will exhibit, in strong relief, their different structures and tendencies.



The Delegates are chosen annually : the Senators for five years. The Delegates are chosen directly by the people : the Senators by an electoral college, constituted upon the same principles as the house of delegates. The Delegates are elected for, and as the representatives of counties : the Senators are chosen from the State at large. Delegates to fill vacancies, are elected in the same manner as those originally elected : Senators to fill vacancies, are chosen by the Senate itself. Hence it appears that in their separate organization, the elective power is different ; the tenure of the office is different ; and the object immediately represented is different.

There is no part of our State government which has been so much the theme both of censure and applause, as the organization of the Senate. If a popular anecdote may be received as true, its form when first proposed, elicited the unbounded admiration of the distinguished Samuel Chase, who is said to have pronounced upon it the very forcible eulogium, "'Tis virgin gold." Abroad and at home, it has been more commended than any similar body known to the States of the Union. Nor have these commendations been founded merely upon speculative views of its tendencies, but also upon its practical results. By the late Dr. Ramsay, its organization was considered one of singular excellence. "Ten of the eleven States, (he remarks,) whose legislatures consisted of two branches, ordained that the members of both should be elected by the people. This rather made two co-ordinate houses of representatives, than a check on a single one by the moderation of a select few. Maryland adopted a singular plan for constituting an independent Senate. By her constitution, the members of that body were elected for five years, whilst the members of the house of delegates held their seats only for one. The number of Senators was only fifteen, and they were elected indiscriminately from the inhabitants of any part of the State, excepting that nine of them were to be residents on the west, and six on the east side of the Chesapeake Bay. They were elected, not immediately by the people, but by electors ; two from each county, appointed by the inhabitants for that sole purpose. By these regulations, the Senate of Maryland consisted of men of influence, integrity, and abili-





ties, and such as were a real and beneficial check on the hasty proceedings of a more numerous branch of popular representatives. The laws of the State were well digested, and its interests steadily pursued with a peculiar unity of system : while elsewhere, it too often happened in the fluctuation of public assemblies, and where the legislative department was not sufficiently checked, that passion and party predominated over principle and public good." (13)

A similar eulogium will be found in the third number of the *Federalist*, in which Mr. Hamilton, after contrasting its organization with that of the Senate of the United States, remarks, "If the federal Senate, therefore, really contained the danger which has been so loudly proclaimed, some symptoms at least of a like danger ought by this time to have been betrayed by the Senate of Maryland; but no such symptoms have appeared. On the contrary, the jealousies at first entertained by men of the same description with those who view with terror the correspondent part of the federal constitution, have been gradually extinguished by the progress of the experiment; and the Maryland constitution is daily deriving, from the salutary operation of this part of it, a reputation in which it will probably not be rivalled by that of any State in the Union."

In adducing these opinions, it is not our design to subscribe to them in their full extent, or to rest the system upon them. They are entitled to respect; but they are not authoritative. They do not preclude inquiry; but they serve to show, that during our revolutionary struggle, and down to the adoption of the Constitution of the United States, the theory and results of this part of our constitution were equally approved. At the present day, it is generally the subject either of indiscriminate approbation, or unqualified censure; and in this, as in most other instances, the line of truth lies between. "Keep the middle way," is generally the safe doctrine in such cases, yet it is not without its difficulties. He, who thus places himself between opposite opinions, is often regarded as the common enemy of those who hold them; and they for a moment forget their hostility, to meet and mingle in a common warfare against his doctrines. The shield of truth is then the only

(31) Ramsay's *History of the American Revolution*, vol. 1st, 445.





protection left him, and the judgment of the future the only tribunal to which he can appeal. Yet he who enters upon such an examination, must not shrink from its difficulties.

The prominent and characteristic features of the present constitution of the Senate, are—The intervention of the Electoral college: The selection of the senators from the State at large The duration of their office: and the Senate's right to fill vacancies. The objects and tendency of these it will be proper briefly to examine.

In adopting the peculiar mode of electing our Senate, the framers of our constitution appear to have had in view two prominent objects; the equal influence of the counties in its choice; and the selection of the senators, as the representatives of the State at large and not of particular sections. The present was the only system, by which these two objects could have been concurrently accomplished. If the senators were elected for counties or cities, they would, by the very nature of their election, have stood in the relation of representatives to such counties or cities: and no system of election by general ticket could have been devised, which would have preserved both these objects. By the substitution of an electoral college, in form the mere miniature of the house of delegates, each county was insured an equal influence in selecting senators for the whole State, which was considered tantamount to a specific equal representation in the Senate itself: and, at the same time, the persons selected by the college were made, by the very manner of their choice, to regard themselves as the representatives of the whole State, or at least of their respective shores. The system was also recommended by the advantages of an indirect election by representatives, who would discharge this duty under the eye of the whole State, and under a high sense of responsibility to the community which they dared not disregard. Originally established upon such considerations, the present organization of the Senate is still sustained by them in all their original force; and cannot be destroyed, without departing from them. The change of the system would not be a mere alteration of its modes, but an abandonment of the principles of its formation: and hence it is necessary to consider in connexion with any pro-



position for change, the value of these principles, and the consequences of their destruction.

The abolition of the Electoral college, and the allotment of Senators to the several counties and cities in the ratio of their respective representations in the house of delegates, will of necessity render the constitution of our Senate, a mere copy of that of the house of delegates in all but the duration of the office: and thus the efficacy of the two houses, as checks upon each other, will be much impaired. In fact, there will remain no checking principle, but that derived from their separate existence. Organized in the same manner, and subject to the same species of responsibility, they will be governed by the same influences. There will be nothing but a representation of sections; and, perhaps, as its consequence, a legislation ever fashioned by sectional jealousies and prejudices. Hence we find that Mr. Jefferson, who was an acute observer of the principles of government, has characterized, what he terms the homogeneous structure of the two houses of Assembly, under the old constitution of Virginia, as one of the greatest defects in its organization. "Being chosen (he remarks,) by the same electors, at the same time, and out of the same subjects, the choice falls of course on men of the same description. The purpose of establishing different houses of legislation, is to introduce the influence of different interests or principles. We do not, therefore, derive from the separation of our legislature into two houses, those benefits which a proper complication of principles is capable of producing, and those which alone can compensate the evils which may be produced by their dissensions." (14) Yet the structure, upon which he thus remarks, did not render the two houses of that Assembly as similar as those of our Assembly would be, if the alteration we are considering were accomplished. There the senators represented districts, and the delegates counties, although the qualifications for the voters were the same: but here in the case supposed, they would be elected by the same persons and for the same sections. The conformity between the two branches of the legislature would then be more exact under our constitution, than under the forms of state governments around us, which are

(14) Jefferson's Notes on Virginia, 122.





appealed to as examples to sustain the proposed change: for under all of the latter, the members of the less popular branch represent more extensive sections of the State. If then we admit, what all the forms of our republican governments seem to assert, that the division of a legislature into two branches is instituted to make them checks upon each other, there is no middle ground to occupy. Either the doctrine that such checks are necessary is erroneous; or the checks should be efficient. Yet by the continuance of our two houses of Assembly, we would admit the doctrine; and by their similar structure, we would defeat its application.

The difference between the term of office of the Senator and that of the Delegate has been sometimes adverted to, as if by such a distinction all the purposes of the separate existence of the two houses were answered. The senator, it is said, being elected for a much longer period, will be subject to none of those momentary influences, or apprehensions of the loss of office, which might deter him from the fearless discharge of his public duties. Such notions spring from a misapprehension of the nature and objects of such a check. The mere diminution of responsibility is not a check in legislation. It consists in the existence of different responsibilities, and different influences, so well balanced against each other, as to give to each its due operation, and to deny to all an undue preponderance. Like mechanical powers operating from different quarters upon the same object, and giving it a direction, between such opposite impulses, yet partaking of the motive power of all; the various interests in society are thus brought to bear upon general legislation, so as to direct it between their peculiar purposes to the general welfare. But in legislative bodies, such checks not only render the different interests in a community mutual and beneficial restraints, but they are also the safeguards of the people themselves against their own representatives. The two branches compose two different classes of responsible agents, entrusted with the same objects, and deriving their trusts under different circumstances and different degrees of responsibility, yet controlling them only by their concurrent operation.

Turning from these general considerations to those which belong to the peculiar condition of this State, all will perceive at





once the particular influences, which principally war against the general welfare, and most require the interposition of checks. The most careless observer of our State government, must have remarked its tendency to create and perpetuate sectional divisions, ever carrying in their train sectional jealousies and prejudices. The very bounties of Providence have proved causes of separation. The noble bay, which intersects our State, has almost become the line of demarcation between distinct people and governments; and every variety of local interests, every peculiar advantage of situation, have been brought into requisition to scatter dissensions amongst us. How well they have accomplished it, in rallying shore against shore; counties against counties; Potomac interests against Susquehanna interests, and Eastern shore interests against both: county jealousies against Baltimore influence; and Baltimore apprehensions of county enmity, let the past transactions of our legislature determine. If ever there was a State, in which local interests have operated to the general prejudice, it is the State of Maryland. All her institutions, however general in their purposes, are but so many representations of sections. Her Senate, as at present organized, approaches more nearly to a state representation than any other: yet even here the shore distinctions predominate. It therefore becomes our people to weigh well the consequences, which may result from the destruction of the only check in our government upon these, its unquestionable tendencies.

It must be considered, that however different in its structure, the Senate derives its existence from the same source as the House of Delegates. The two houses are merely different modifications of the same right of representation. The same people elect, the one to represent their local interests, and the other to direct these with a due regard to their State interests. The latter they have accomplished in the only mode consistent with their county rights, by devolving the selection of senators upon responsible electors of their own choice, precisely as the election of the governor is cast upon the house of delegates: and if it be objected that this indirect mode of election is improper, the objection equally requires, that the Governor should be elected by the people. Adopting this mode, and directing the selection of the senators without respect to county divisions, it was the



purpose of our constitution, that the senator should represent and protect State interests; that he should feel and respect the popular will, but not fear its hasty impulses; and that he should be subject to a responsibility which, like the kindly influences of the sun, is too remote to inflame, and yet near enough to vivify and impart creative power. If these purposes be accomplished, the Senate is then, what it was intended to be, *a check*: if not, the defect lies, either in the organization of the electoral college, or in the attributes of the Senate: and these we now propose to examine.

In the constitution of such a body as the Electoral college, the great *desideratum* is the exclusion of all sinister influences, which might seduce the members from their duty to the public. In this as in every other agency, much depends upon a proper sense of accountability on the part of the agent: and this is regulated by the degree of his responsibility, the consequences of disregarding it, and the speediness of their operation. In the case of an elector of the Senate, all these ordinarily concur, in the most favorable form, to promote the faithful discharge of his duties to his immediate constituents. He returns, as soon as the election is concluded, to the walks of private life: and is brought at once under the full operation of public disapprobation, if he is deemed to have neglected the public interests, or to have prostituted his official powers to the promotion of his own selfish designs. His office has ceased: and with it, all opportunities of employing official influence, to palliate offence, or mitigate the censures of his constituents. This responsibility, however, is often partial in its operation. He selects for the whole State: and yet the manner of his election often leads him to conclude, that he is not responsible to any but the people by whom he is elected. Still this is not the result of the constitution, but of his own imperfect sense of duty. The constitution enjoins, and his oath of office requires, that he should select persons "of the most approved wisdom, experience, and virtue:" and hence he is permitted the widest range in his choice. If the duty thus resting upon such high moral sanctions be disregarded, the consequences to him who violates it, are at least as punitive as any which could flow from any other system. Yet at last, the most effective safeguard of official purity, consists in the exclusion of temp-





tations. Men will not forsake the path of duty, if they cannot thus promote their selfish interests. In the exercise of elective power, the station of the elector should never be the instrument by which he may advance himself to office. Here our present system is defective. The elector of the Senate is eligible as senator : and in the latter office he may place himself by the mere influence of the former. Thus temptations are held forth to make the obtention of the latter, the design in seeking the former : and when they suggest such a purpose, they tend to lead away the elector from the consideration of his public duties, and to prepare him for any arrangement which will accomplish his own election.

There is, however, one consequence of the election of the Senate by an electoral college, which all must deplore. The wholesome exercise of legislative power is always promoted by the liberty of difference, both in opinion and feeling, amongst the several members of a legislative body. This liberty should exist to such a degree, as to induce a full and impartial investigation of the merits of every question. Collision in sentiment is necessary to elicit this. As with the pool of Bethesda, the troubling of its waters was required to impart to them a healing efficacy : so with legislatures, the agitation of opinion is necessary to the purity and propriety of their measures. There should never be any general or dominant feeling or principle of action, under which they act in blind submission, and without reference to the merits of the question proposed. The consequences of such submission are constantly witnessed, in the operations of our State and national governments : and they cannot be obviated so long as parties exist. Legislatures will become instruments in the hands of a party, for the promotion of party purposes. In our State legislature, during the alternate ascendancy of the two great parties, which formerly divided our State and country, we have seen each party, at moments, resting their decisions on questions of right, solely upon the doctrines of political expediency. In our House of Delegates, the operation of these feelings was always mitigated by the manner of its constitution. The voice of the minority was always heard in it. Its members did not, as those of the Senate, all spring from the same creative power. They came severally from the counties, and each bore the impress of the general feeling of the county he





represented. In that house the propriety of measures was discussed ; because there was always conflict of sentiment. But not so in the Senate. The party which prevailed in the electoral college, always gave to it its own political character exclusively. The test of qualification was, "will he play the partisan?" The Senate was sometimes made the receptacle of political invalids and broken down politicians, whose influence it was expedient to revive, or whose partisan services it was convenient to reward. Thus the Senate being entirely of one political complexion, became a mere political engine : and party expediency was, from the very manner of its constitution, the guide to its duties. Had the Senate been elected directly by the people, or by electoral colleges raised for each county or for districts, the same feeling might have governed, but still the minority would have been represented and heard in the midst of it. If, however, the duration of the office of senator had corresponded to that of the delegate, the total want of a representation of the minority in that body would not have been so objectionable. But they were elected for five years. The feeling under which they were elected, might be, and often was, the feeling of the State for but a very short time after their election ; and long before they went out of office, they were the exclusive representatives of a minority. In the expression of the sentiments of the people, in their elections, and in their legislative acts generally, they were sometimes found to a man in direct and wilful opposition to the well ascertained will of a majority of the people of the State. These days have not passed by. Party feeling is again upon us, and party divisions again pervade our State. They have returned, to bring with them in their train the same consequences, or at least a liability to them. The Senate will again be elected under the influence of the dominant party, who will give to it the same exclusive political character, and the same dull and vapid existence ; and it may again become the exclusive representative of a minority.

These tendencies might, perhaps, be obviated by an arrangement of the Senators into classes, according to the manner in which the Senate of the United States is organized ; so that these classes should retire at different periods : and thus partial vacancies might be made to occur at least once in every two years, to be filled by a new electoral college. If the Senate,



could be organized so as to correct these tendencies, one of the principal objections to its right of filling vacancies in its own body would then disappear: but as at present constituted, this power puts the stamp of perpetuity upon its original form and character. By its aid, as the electoral college leaves the Senate, so the people find it at the end of its term. Such is the joint result of the election by the college in the first instance, and of the elections by the Senate to fill vacancies, that not only may not the breath of popular will blow too rudely upon that body, but it is not even admitted to ventilate it. Under these operations, it may remain like an Egyptian mummy, embalmed in the spirit of the college which gave it birth: and whilst every thing around it, has changed, has progressed, and has adapted itself to the temper and circumstances of the period, it remains wrapped in its swaddling clothes, rigid in the form impressed upon it at its birth, and retaining all its infant features.

It must be evident, also, that the great hold which the people have upon those, who represent them in the exercise of the elective power, is greatly weakened, if not entirely destroyed, in the election of senators by the Senate. Every form of government is chimerical, and fitted only for the Golden Age and an Utopian commonwealth, which, for the proper exercise of delegated power, reposes implicitly upon the virtue and intelligence of the delegate. He must be checked by proper apprehensions, and impelled by proper hopes: and these can exist only where there is a proper sense of accountability. Yet from the manner of its organization, there is little to impress upon the Senate the conviction, that the office which they bestow is not their gift, but a public trust. Nor is this manner of appointment redeemed by the tendencies anticipated by the framers of our constitution. It was expected that persons, themselves selected for their high qualifications, were peculiarly fitted for the selection of their fellows. Yet, although men may beget like as an involuntary consequence, they will not always voluntarily appoint like. They cannot, in general, bear "a rival near the throne:" and much less will they bring a rival near it. In a small body, such as our Senate, its influence will generally be wielded by a few, who may not desire to introduce a new member, to control it by his talents and virtue: and in the general, each member will be unwill-





ling to diminish his relative standing and influence by the capacities of those whom he may elect. The character of the elections heretofore made by the Senate, has not realized these views : but has rather given additional sanction to this mode of filling vacancies. Yet, although the virtue and intelligence of the Senate have hitherto, in a great measure, counteracted these tendencies, they exist and will yet be felt.

Like every other human institution, the structure of the Senate has, therefore, its defects. Some of them are inseparable from it : and to such it is but fair to put in contrast, its peculiar merits and advantages. Others might perhaps be removed, by a slight change in the form, not conflicting with its governing principles : and to these, remedies should be applied. But in abandoning this organization for one corresponding to that of the house of delegates, we shall destroy its efficacy as a check, and break down the only barrier against sectional and partial legislation. If change should be resolved upon, the prejudicial results of an uniformity in the organization of the two houses would be, in some degree, obviated, by electing the senators for districts, composed of two or more counties, so as at least to produce a different combination of sectional interests in the two houses : and would be wholly removed, by making one of the houses a representation of population. The present constitution of the Senate is the only apology for a system of representation, by which a minority of its people have at all times the power to control the government of Maryland. It is due to the present form to remark, that from the adoption of the constitution to the present day, our Senate, in the intelligence, experience, and virtue, which it has embodied, may be proudly contrasted with any legislative body of the Union. If by its fruits it is to be judged, it will not fear to come to judgment : and thus recommended, it should not be lightly abandoned. In departing from it, there is one safe alternative, in organizing the Assembly so as to make one house the representation of counties, and the other of population. Such an organization rests upon republican principles : and its results are manifest in the experience of our sister States. But all else will be vague and dangerous experiment. The rule "to try all things, and hold fast to that which is good," will answer better in every thing else than in governments, where the people always pay the cost of the experiment.





## CHAPTER X.

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### THE POWERS OF THE GENERAL ASSEMBLY.

THE General Assembly of Maryland was instituted for the exercise of legislative power: but as the immediate organ of the public will, it is clothed with various rights, not pertaining to legislation, and in some instances purely executive in their nature. Hence we distinguish its powers into *legislative* and *incidental*. In examining its legislative power, we shall consider—(1) The sources and efficacy of its restrictions—(2) The particular restrictions, *under the State government*, relative to the nature of this power—(3) Those protective of constitutional institutions—(4) Those flowing from the declared rights of the citizen—(5) Those relative to the manner of legislation.

(1) *The sources and efficacy of the restrictions upon its legislative power.*

The legislative power of the General Assembly, whilst it conforms to the objects of human government, may be said to be absolute and uncontrolled over all persons and all objects within the limits of the State, where it is not restricted or excluded by the Bill of Rights and Constitution of Maryland, or by the Constitution of the United States. This is not a solecism. There is a material difference between a power embracing all that is not denied, and one extending only to what is expressly granted. The government of the United States is of the latter description: and therefore its various departments can exercise only the powers expressly granted, and such others as are necessarily incident to the full enjoyment and exercise of the express powers. The State government, on the other hand, possesses plenary powers, limited only by its nature and express restrictions. This distinction springs from the different nature and objects of these governments. The latter was called up out of a state of nature, and established



over the people of Maryland, for the general purposes of human government: the former was erected over distinct and independent States, to concentrate their energies for their general welfare and defence, and to modify or control their several governments only so far as it was necessary for this end. Hence our State Constitution and Bill of Rights, as relating to a government of general powers, have not undertaken to define the cases to which the legislative power shall extend, but have only designated certain cases to which it shall not extend, and provided for its exercise. The power is derived from these instruments under a general grant: and hence, when it was observed by the late General Court, "that the legislature could not rightfully exercise any power but what is derived from these," they explain this observation by the further remark, "that although, in their opinion, the authority of the General Assembly was limited, yet as the powers of legislation were not particularly or specifically defined, but conferred under a general grant, they are subject only to such limitations as are contained in our form of government, and the constitution of the United States." (1)

Yet the legislation, under every government, ought of course to be regulated and limited by the nature of that government, and the objects for which it was formed. These prescribe the proper sphere in which it ought to move, and mark out the orbits of its various powers and duties: and whenever it departs from them, the subjects of a government thus perverted, may rightfully return to first principles, and remodel or shake it off. The true object of all government is the protection and security, of the person and property of the subject. In a state of nature, every individual is open to the attacks of all, and has but his own energies to resist them: and hence men have combined into communities, so as to ensure to each, for his defence and the protection of his property, the power of all his associates. This is the "*rationale*" of human governments; although in many it is wholly disregarded; and in others, much obscured by fraud, force, or accident. Their object being, therefore, to knit together the force of the whole society for the protection of the particular rights of each member,

(1) 1st Harr. and Johns. 242 and 246, Whittington vs. Polk.





in subservience to the general interest, it clearly indicates a limit to their powers, and a restraining reason in their exercise. They are all at bottom social compacts, which the parties to them are not competent to invest with all power, and by which they have not in fact surrendered all natural rights.

It requires but little reflection upon the extent of *natural rights*, to convince that they are not uncontrolled. They are all in subjection to the natural and revealed law of God; and the social rights, which are formed out of them, and constitute what is called "government," must of necessity be in like subordination. A government, with the fullest powers, cannot therefore lawfully order an act to be done, which is contrary to the essential principles of the natural or revealed law of God: because they, who established it, could confer no such power. It is also evident, that every man must be presumed to have entered into society for the protection of his person and property; and that he carries with him, even from the state of nature, the right to defend these, where the laws of society cannot interpose in time to shield them from lawless violence. If therefore an act of Assembly should expressly deny to the subject, the right to defend the person against the assaults of the murderer or the brutal violator of chastity, or the property from the grasp of the highway robber, it would be a manifest departure from the first principles of government. So also, as society is formed to preserve the rights of property, it can properly impair or control these, only so far as it is requisite for the public welfare or defence or necessities; and even this power should be exercised, with a due regard to the obligation of each member to contribute rateably for these purposes. The express doctrine of some of the state constitutions, "that private property shall be taken only for public uses, and then only upon compensation," does but declare an inherent principle of society. Acts of legislation, which would arbitrarily take away the property of an unoffending citizen, and give it to another for his private uses, or even apply it to public uses without making or providing for compensation, are therefore in direct conflict with the nature and ends of government. These instances will suffice to illustrate the general character of the natural rights and obligations, which follow men from a state of





nature into society, to control human governments or supply their deficiencies. (2)

But whilst the justice of such restrictions, and the obligation to respect them, are admitted, their application presents another and more difficult question. Limitations of power properly so called, carry with them a sanction and mode of enforcing their observance, known to, or established by the government itself; and are distinct from those principles of right, which can be restored only by its subversion. Are these restrictions of natural law, or these reservations of natural rights, *as such*, limitations of this character? The full discussion of this question would lead us too far from the original purposes of this work; and would at last be of little practical utility. Were we even for a moment to admit the supposition, that the Assembly would wilfully violate such obligations; the express provisions of our government have so fenced about the rights of the citizen, and have clothed them with such securities against encroachments, that usurpation upon them can rarely, if ever, be practised. It is a well established doctrine of the constitution, that in construing and applying acts of legislation, no violation of natural justice shall ever be presumed to have been in the contemplation of the legislature, and that every intendment shall be made against it. Striking illustrations of this doctrine may be collected, from the case of *Dash vs. Van Kleeck*, decided by the Supreme Court of New York, in which the retrospective efficacy of statutes was most thoroughly investigated and ably discussed; (3) and the case of *Ogden vs. Blackledge*, decided by the Supreme Court of the United States. (4) These, and the many similar cases in our courts, although relating to questions somewhat different, will warrant the general remark, "that statutes ought never to receive

(2) See the very forcible remarks of Judge Chase, upon this subject, in 3d Dallas, 383; those of Judge Patterson, in *Vanhorne's Lessee vs. Dorrance*, 2d Dallas, 310, and also 2d Rutherford's *Institutes of Natural Law*, 47; by which the doctrines of the text are fully sustained. Legislators, who are so fond of interfering with private rights, may employ themselves usefully in reading the 21st chapter of the 1st *Book of Kings*.

(3) 7th Johnson's New York Reps. 477, and particularly the remarks of Chief Justice Kent, in page 502.

(4) 2d Cranch, 272. See also 1st Bay's South Carolina Reps. 179. 3d Dallas, 386, *Calder vs. Bull*. 3d Cranch, 399, *U. States vs. Heth*.



a construction, which will work a violation of natural duty or reserved natural rights, or will conflict with the obvious ends of government, if susceptible of any other reasonable construction, or if they can otherwise have a reasonable operation." This is a rule of construction of common law origin, familiar to the English courts, and prescribing the extent to which they can go in controlling acts of parliament: for notwithstanding the *dicta* of such distinguished judges as Coke, Hobart, and Holt, the power of those courts over such acts can go no further. (5)

The application of this rule, so as to take away the unreasonable operation of statutes, has been generally the limit of judicial interference, in this country, with legislation ordaining what is contrary to reason and natural justice where there are no express constitutional restrictions: and by high authority, it has been declared to be the utter barrier of judicial power in such cases. "If (says the late Judge Iredell,) the legislature of the Union, or the legislature of any member of the Union, shall pass a law within the general scope of their constitutional power, the court cannot pronounce it void, merely because it is in their judgment contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard: the ablest and purest men have differed upon the subject; and all that the court could properly say, in such an event, would be, that the legislature, possessed of an equal right of opinion, had passed an act which, in the opinion of the judges, was inconsistent with the abstract principles of natural justice." Yet the contrary doctrine appears to have been held by Judge Chase in the same case; and in some of the states, has been sanctioned and acted upon by the courts. (6) In one of the more recent of these cases in the Supreme Court of New York, where, in justification of an alleged trespass, the defendant pleaded a license to enter under one of the canal acts and for purposes connected with the canal improvements, it was

(5) 1st Blackstone's Comm. 91; and Christian's note, 2d Dallas, 308.

(6) *Calder vs. Bull*, 3d Dallas, 399—on the other hand, see Judge Chase's opinion, in same case; that of Judge Patterson, in the case of *Vanhorne's Lessee vs. Dorrance*, 2d Dallas, 304. 20th Johnson's New York Reps. 106. 1st Bay's South Carolina Reps. 98 and 254. 2d Bay, 38, and particularly the remarks of Waties, J. in 2d Bay, 58.





objected to the efficacy of the act, that it made no provision for compensation, and the objection was sustained by the court. In delivering its opinion, Spencer, C. J., puts out of view the restrictions of the Constitution of the United States relative to taking private property for public uses, as applying only to the national government; and those of the recent Constitution of New York, as not then operative. "But these, (he remarks,) are both declaratory of a great and fundamental principle of government; and any law violating that principle must be deemed a nullity, as it is against natural right and justice." (7) The decision in this case was removed to the Court of Errors, and there reversed: yet even the opinion of this court, as delivered by the Chancellor, does not deny, but rather affirms the general principle asserted below. It was considered by it, that the omission of the act in question to make compensation was supplied by antecedent acts; and that even if it were not, it would be carrying the principle too far "to hold a public officer a trespasser, who enters upon private property by virtue of a legislative authority specially given for a public purpose." Yet it is expressly declared by that court, that there is in such cases an equitable and constitutional title to compensation, which imposes an absolute duty on the legislature to make provision for it, where they authorize an interference with private property; and they say further, "that perhaps in such cases, the exercise of the power might be judicially restrained, until an opportunity was given to the party injured, to seek compensation." (8)

For precedents to sanction such an exercise of judicial power, we would look in vain to the country from which we have derived most of our legal doctrines. Much has been said of the English Constitution: and from the application of the term, we might sometimes infer, that under the English government, as under our republican governments, there are certain fundamental principles and institutions, and reserved powers, over which parliament has no control, or which are at least above the reach of ordinary legislation. Yet in this point of view, England has no

(7) 20th Johnson's New York Reps. 106.

(8) Same, 744.





constitution. Certain established principles of government, and long enjoyed and therefore prescriptive privileges, may be styled "The Constitutional rights of the English people:" yet there are none so sacred, as not to be within the reach and at the mercy of every Parliament of Great Britain. But in our country, the social compact and its restrictions, are not merely the speculations of philosophy, or the fictions of law. They are living, and ever active, in all our state constitutions. In these are embodied, the standards of public and private rights, and the elements of public power. From them all authority is derived, and by them must its exercise be justified. To apply to them the language of our Court of Appeals, in reference to our own State government, "they are the immediate work of the people in their sovereign capacity, and contain standing evidences of their permanent will. They portion out supreme power, and assign it to different departments, prescribing to each the authority it may exercise, and specifying that from the exercise of which it must abstain. The public functionaries move then in a subordinate capacity, and must conform to the fundamental laws or prescripts of the creating power. When they transcend defined limits, their acts are unauthorized, and must necessarily be viewed as nullities." (9) In conformity with these principles, public acts, which transcend the express limits of our constitution and bill of rights, are void, and will be so pronounced by our courts. These instruments are acknowledged standards, to which the courts may bring every exercise of power; and in the application of them, where is the distinction between acts which conflict with their express declarations, and those which are at war with their whole nature and ends? The latter are continually brought into view and considered by the courts, in construing and applying the Constitution and Bill of Rights: and why may they not also be applied to acts manifestly violating the fundamental and unchangeable principles of natural law? Where natural rights have been recognized by our laws, or the decisions of our courts, they are surely entitled to all the immunities of such rights. The objection as to their uncertainty then ceases; and the courts, in protecting

(9) 1st Gill and Johnson, 472.



them against usurpations, do but declare what has been previously admitted, that they were not merged in the government. The right of self defence is one of this description. It has been constantly acknowledged and acted upon, not, in our apprehension, as a common law principle, but as an admitted natural right: and if it were expressly denied by an act of Assembly, it would be difficult to maintain, that the courts could not protect it even against such a violation. The subject admits of many other illustrations which it is not necessary to pursue. It relates to questions not likely to occur in our experience: but it involves considerations, which our legislature should have constantly in view. The objects of government, and the impartial dispensation of its benefits and burdens, are to it rules of action which, although laws may not enforce, yet duty enjoins.

The *express* restrictions upon the powers of the General Assembly flow, either from the Constitution of the United States, or from our State Constitution and Bill of Rights. Those arising from the former apply to State authorities generally; and we shall therefore defer their consideration, until we come to treat of the adoption and obligations of the Federal government. Before considering those incorporated in our form of State government, it may be proper to premise a few remarks upon their general nature and efficacy.

Our State Constitution and Bill of Rights, are the repository of the fundamental principles and institutions of our government: and if they had not expressly reserved the power of amending or altering them, it could not have been exercised under the government, but only by the people in their sovereign capacity. Such is the character of several of the State Constitutions, which of course can only be amended by special conventions constituted by the people for that purpose. Our constitution has, however, reserved this power, and prescribed a mode of exercising it, which was intended to obtain the results without producing the inconvenience of special conventions, and perhaps also to perpetuate the equality of county representation, and the relative political power of the two shores. It enacts, that no part of the Constitution or Declaration of rights shall be altered or abolished, except by a bill for that purpose passed by the General Assembly, and published at least three months before a new election of





delegates, and confirmed by the General Assembly at the session next after such new election; so that the confirming bill must always be passed, if at all, by a new house of delegates, elected immediately after the proposed amendment is submitted to the consideration of the people, and at its first session. But whenever such bills propose alterations or amendments in any part relating particularly to the Eastern Shore, it is further necessary that they should be passed in the first instance, and afterwards confirmed, by the votes of two-thirds of all the members of each house of Assembly. (10) Such being the extent of these restrictions, it is scarcely necessary to remark, that all laws not thus passed and confirmed, which violate or conflict with them, are absolutely null and void so far as they do violate or conflict with them, and will be so declared by our courts. For many years after the adoption of the constitution, the power of the courts to declare such acts void was not placed beyond the reach of doubt: (11) but it was at length fully affirmed by the General Court, in 1802. (12) From that period until the present, it has remained unquestioned; and has been twice exercised by our highest court. (13) The necessity of such a power residing somewhere, must be manifest to all: for without it, constitutional restrictions would have been nullities. Existing as a mere check, it could not have been so properly entrusted to any of our public authorities as to the judiciary, for its independent and impartial exercise. But it belongs to our courts, not as a power to control, but as a duty to be performed. To the authority of the constitution and bill of rights, as the fount of our government and institutions, and the supreme law of the land, they are bound to defer; and they cannot in consistence with their official obligations, give efficacy to unconstitutional laws. (14)

(2) *The particular restrictions under the State government, relative to the nature of this power.*

It is now almost an axiom in the philosophy of governments,

(10) Const. art. 59.

(11) See 3d Harr. & McHenry, 108 and 169.

(12) Whittington vs. Polk, 1st Harr. & Johns. 242.

(13) Dashiell vs. The State, 6th Harr. & Johns. 270; and Crane vs. McGinnis, 1st Gill & Johns. 464.

(14) 1st Gill & Johns. 472; and 2d Bay's South Carolina Reps. 61.





that the chief safeguard of liberty under them, consists in the separation of the three classes of powers, the Legislative, the Executive, and the Judicial. This principle is recognized by most of our State governments, as one of vital importance: and rests upon reasons familiar to the American people. It is our purpose, in that part of this work which treats of the organization of the supreme executive power, to investigate the origin and objects of this principle in republican governments, and to inquire, if it demands not only a separate exercise of these powers, but also the distinct and independent organization of the departments by which they are severally administered. It will suffice here to remark, that their distinct exercise is fully secured by our Bill of Rights, which declares "that the legislative, executive, and judicial powers of government, ought to be forever separate and distinct from each other." (15)

This doctrine does not refer to the organization of these departments of power: nor is it a mere recommendation to them, to observe the purposes of their separate existence. It is a positive inhibition, referring directly to the exercise of these three classes of powers, and restraining, by all the efficacy of the constitution, those who administer any one class of them from attempting to exercise the powers which belong to either of the others. Nay, more; it denies to the legislature, the right to confer upon the administrators of legislative, executive, or judicial power, any authority not belonging to the class of powers, for the exercise of which they were created: and therefore, any act of Assembly, which exercises judicial or executive power, or confers upon the Judiciary, either legislative or executive power, or upon the Executive, either judicial or legislative power, is absolutely void, and will be so declared by the courts. These doctrines are fully sustained by the recent decision of the Court of Appeals, in the case of *Crane vs. Meginnis*, at June term, 1829: in which a section of an act of Assembly was, declared unconstitutional and void, because it was an exercise of judicial power. (16)

Hence the *General Assembly* (except in the cases permitted by the Constitution, which will appear at the close of this chapter,) can exercise no power but what is *legislative* in its nature: and

(15) Decl. of Rights, art. 6th.

(16) 1st Gill and Johnson, 464. See also, 5th Har. and Johns 304.



all its acts beyond the appropriate sphere of legislation, are null and void. Its power is simply to designate civil rights and remedies, and to propound rules of action to the citizen: whilst the enforcement of these belongs to the other departments of the government. Thus considered, it renders easy the application of this general restriction to particular cases, as they may arise. The distinction between legislative and executive power, is too obvious to require comment. That which separates legislative from judicial power, is often faintly defined, and is most likely to be overlooked. Yet there are two general principles, relative to the two great functions of the judiciary, by the application of which to any Act, the presence of judicial power is easily ascertained.

To enact laws, is the province of the Legislature: to construe, interpret, and apply them, is the office of the Judiciary. The former determines what the law shall be: the latter declares what it is or has been. Therefore, all acts of Assembly, which attempt to alter or control the construction of antecedent laws, are exercises of judicial power, and are wholly inoperative for such purposes. The Assembly may alter or repeal laws: but it cannot, by its interpretations, affect their antecedent operation: and hence, although such Acts may operate as new laws, from the time of their passage, upon all future cases, they cannot affect the construction of Acts as to cases which have already occurred. (17)

To the Legislature it belongs, to define civil rights and devise remedies for their protection, to prescribe rules of conduct to the citizen and punishments for their violation: to the Judiciary, to apply these remedies, and adjudge these punishments. From these distinctive features of their functions, we may collect the general principle "that wherever a right exists, for which the laws have assigned a remedy to be sought through the courts of justice, any act of the Assembly, taking the remedy into its own hands, and prescribing the redress to be made, is an exercise of judicial power, and as such is unconstitutional and void." This principle will be found to be fully sustained by the case of *Crane vs. McGinnis*; although in that case, the Court of Appeals did not un-

(17) See 2d Cranch, 276, and 7th Johnson's N. Y. Reports, 492, 494, 498, and 508.





undertake to define judicial power generally, but simply declared, that the particular exercise of power under their consideration, was judicial in its nature. Yet from that particular instance, we may collect this general principle of such extensive application. The Act in question in that case was an Act of divorce, by one section of which the husband was required to pay over a certain annual amount for the support of his wife. Upon a full examination of the power to divorce as ever exercised in this State, it was determined by the court, that it was here a legislative power, but did not draw after it, as its necessary incident, the right to allow alimony: and that the suit for alimony in this State, as in Great Britain, was a distinct remedy from the proceedings for divorce, had been so considered before the Revolution, and was now expressly recognized as such by the Act of 1777, investing the Chancellor with jurisdiction over such suits. "We cannot bring ourselves to doubt (say they in conclusion,) that if Mrs. M. had obtained simply an act of divorce, she might have recovered, having merits, a maintenance suitable to her condition in life, and to quadrate with the situation of her husband, by a bill in Chancery, or an application to the Equity side of Kent County Court. If she could have been thus redressed by an exercise of judicial authority, we would ask, is it not fair to conclude that the redress granted to her by the legislature is an exercise of judicial authority?" (18) Yet this principle must be confined to the administration of remedial power by the legislature itself: and cannot apply to Acts, which merely transfer that power from one tribunal to another, or delegate it for a particular case to a special tribunal: or which reinstate a judicial proceeding, or restore a remedy through the Courts after it has been lost. Such Acts as the latter, are only exercises of its unquestionable power to prescribe and modify civil remedies, and are essentially distinct from those by which the legislature itself undertakes to administer them. (19)

(18) See 1st Gill and Johns. 475.

(19) See the cases of *Garretson vs. Cole*, 1 Harr. and Johns. 391, and *Gover vs. Hall*, 3d Harr. and Johns. 49. Yet the latter exhibits a strong case of legislative interference, which can scarcely be sustained even upon the doctrines of the text, although it was acted upon by the Court of Appeals. It was a case from Chancery, in which the original decree of the Chancellor was reversed by the General Court, and the case remanded under its decree.





(3) *The restrictions protective of constitutional institutions.*

It is unnecessary, in this place, to enumerate the several offices established by our constitution, or for which it has provided a manner of appointment, or prescribed powers and duties. This belongs more properly to the history of the origin and nature of these offices, from our several examination of which it will appear, in what instances, and to what extent, they are Constitutional Institutions. For our present purposes, it is only necessary to illustrate the extent, to which such institutions generally are protected by the constitution from the ordinary legislation of the Assembly.

All State offices, which are not established or recognized by the constitution, but have been introduced upon common law principles and as common law institutions, or established by acts of Assembly, and rest upon the latter for their existence and powers, are wholly under the control of the Assembly, and may be abolished or modified at pleasure by its ordinary acts. It is also competent to the Assembly in creating a new office unknown to the constitution, to give it any form, or prescribe any mode of appointing to it, which does not interfere with the express constitutional powers of other officers. If the constitution simply establishes an office, and does not determine its tenure or powers and duties, nor designate the manner in which its incumbents are to be appointed; the office cannot be abolished except by an amendment of the constitution, but in all other respects, it is subject to the operation of mere laws. If the constitution has not only established or recognized the office, but has also determined its tenure, or designated the manner in which the officer to fill

In Chancery, a new decree was then made, conforming to that of the General Court, from which appeal was again prayed, and the cause removed to the Court of Appeals : and whilst there pending, for reasons which it is not necessary to detail, an act of Assembly was passed, by which the Court of Appeals was directed to take up the case *de novo*, and to decree as if no decree in the case had ever been made by the General Court. The result of the case was, that the original decree of the Chancellor, which had been reversed by the General Court, was affirmed by the Court of Appeals : but the report does not show whether this was an exercise of power under the act of Assembly, or one to which the Court of Appeals considered themselves competent without any such act. The Act in question, was in effect the reversal of a judicial decision : and as such, savors strongly of judicial power. See, however, the remarks of Spencer, J. in 7th Johns. N. Y. Reports, 491.



it shall be appointed, either naming it particularly, or embracing it under general terms, applicable to it as an existing office at the time the constitution was established, the tenure and manner of appointment are constitutionally protected, as well as the office itself. But to all offices, the Assembly may, by ordinary acts, attach new powers and duties, provided they conform to the nature of such offices, as judicial, legislative, or executive, and do not conflict with their constitutional obligations. These general principles, which are collected from the past and most approved constructions of our constitution, will readily determine, in any case, the extent of this class of restrictions upon the powers of the General Assembly. (20)

(4) *The restrictions flowing from the declared rights of the citizen.*

Our Constitution and Bill of Rights, alike those of the sister States, embody many political truths, which ought to be received

(20) 1st H. and Johns. 249 ; 5th H. and J. 304 ; Opinion of Luther Martin, (when Attorney General) to the Governor and Council, in Council Chamber Records of January and April, 1819. See also the Opinion of Lord Chief Justice Willes, in which he maintains that notwithstanding the charter power of the proprietary to appoint all officers of the province, it was competent to the Assembly, in creating a new office, to vest the appointment elsewhere. (Journal of House of Delegates of 23d March, 1760, and *supra* 310.) This general proprietary power, is analogous to that of the Governor and Council, under the 48th art. of the Constitution, to appoint all civil officers of the government : and the references above given, and particularly the opinion of C. J. Willes, fully sustain the position of the text, that such general appointing powers do not exclude the Assembly, in creating a new office, from prescribing a new mode of appointment. It seems, therefore, that the several acts of Assembly, establishing Boards of county Commissioners, in lieu of the Levy Courts, and giving to the people of the counties in which they are established, the right of electing them, do not infringe the constitutional powers of the Governor and Council.

It will be seen hereafter, that a similar construction has been given to the 37th article of the Const., excluding delegates, &c. from holding other offices of profit : which rests for its sanctions upon the high authority of Mr. Pinkney and Mr. Martin. If it be admitted that general restrictions intended to secure the purity of office, do not apply to *new* and *local* offices, as not being within the contemplation of the constitution : it is much more manifest, that the general appointing power of the constitution does not necessarily attach to them, so as to exclude any other mode of appointment provided for them by the legislature at the time of their creation.





as *maxims* in all republican governments, but are not sufficiently definite to be regarded as imperative restrictions. Such general doctrines are not without utility. They illustrate the powers of government by its nature and ends: and present these constantly to the view of men in authority. But many of them are too indefinite to answer the purposes of standards, by which the constitutionality of acts can be tested. Culling from them such as will answer this purpose, and classifying them according to their objects, they will be found to relate, principally, to the purity of criminal prosecutions—the protection of the rights of conscience—the just distribution of taxation—the subordination of the military—and the liberty of opinion.

In all ages, prosecution for alleged crimes has been the great engine of tyranny. Arbitrary power always seeks to cloak its vengeance under the mantle of justice, and to make the dispensations of the law, the ministers of its own ambitious or malignant purposes. As in this mode the liberties of the subject are most easily approached, and are here most open to attack, it should be the first aim of every government, to give certainty to the character of criminal offences, and to surround the proceedings in criminal cases with every possible security for the protection of the innocent. Offences should be well defined: punishments should be as lenient as is consistent with their proper object, the welfare of society, and proportioned by *law*, as far as practicable, to the enormity of the offence: the tribunals to ascertain the existence of crimes should be above all influences, except the authority of the law, and the dictates of their own judgments: and the alleged offender should be clothed with every power and privilege, which might be necessary, in any event, to the vindication of innocence. When the criminal code of any country wears this character, the chief dangers to civil liberty are removed; and arbitrary power, if it would reach it, can approach only in its naked deformity. Hence the anxious care of our form of government, in reference to criminal prosecutions. It expressly denies to the Assembly the power to pass any *ex post facto* laws in criminal cases; of which nature are all laws operating upon acts committed before their passage, either so as to render them criminal although innocent at the time of their commission, or to increase the degree or change the nature of their punish-





ment, if originally criminal. It prohibits all Acts, which would attain particular persons of treason or felony, or forfeit any part of the estate of any person for any crime except murder or treason against the State. All general warrants to search suspected places, or to apprehend suspected persons, without particularly naming or describing the place or person, it pronounces illegal; and all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, it denounces as grievous and oppressive; and therefore it prohibits the passage of any Acts, which would authorise them. It expressly declares the constitutional right of the citizen, in every criminal prosecution, to be informed of the accusation against him, to have a copy of the indictment or charge in due time (if required) to prepare for his defence, to be allowed counsel, to be confronted with the witnesses against him, to have process for his own witnesses, to examine the witnesses for or against him on oath or affirmation, to have a speedy trial by an impartial jury, and not to be convicted without their unanimous consent. Any Acts which violate these well defined privileges, are unconstitutional and void. (21)

The right to worship God according to the dictates of conscience, is the natural right of every human being, which God himself has sanctioned, and human laws cannot justly impair. Hence, our Bill of Rights expressly prohibits the passage of any law, which would molest the person or estate of the citizen, on account of his religious persuasion, or profession, or practice; unless, under color of religion, he disturbs the peace, good order or safety of the State, or infringes the laws of morality, or injures others in their natural, civil, or religious rights: yet even in such cases as the latter, the power of the Assembly is restricted to the suppression of such abuses. It also denies to the Assembly the power to compel any person to frequent, or maintain, or contribute to maintain, unless on contract, any places of worship, or any ministry. (22)

(21) Bill of Rights, articles 15th, 16th, and 19th, as amended by the act of 1817, chap. 61, 23d, and 24th. Although the constitutional power to forfeit the property of the offender, in cases of murder and treason, still exists, yet all forfeitures are taken away by the act of 1809, chap. 138, sect. 10.

(22) Bill of Rights, article 33d, as amended by the acts of 1809, chap. 167, and 1810, chapter 24. Before the amendment of 1810, the Gene-



The distribution of the burdens of government, in proportion to its benefits, is one of the most obvious dictates of justice; yet it is difficult to lay down any general rules, by which this proportion can always be estimated and preserved, in the imposition of taxes. To arrive at it as nearly as possible, our Bill of Rights expressly prohibits the imposition of any poll tax, and adopts as the general principle of State taxation, the doctrine "that every person ought to contribute to the public taxes, for the support of government, according to his actual worth in real or personal property within the State." Although the latter rule is not sufficiently definite to guard against oppressive distinctions, resulting from a system of taxation purporting to be based upon it: yet it cannot be doubted, that any system, which expressly adopts any other rule of taxation, is unconstitutional and void.

(23)

In every government, the subjection of the military to the civil power, is one of the greatest securities of the citizen. The rule "*inter arma silent leges*," can apply only to cases of extreme exigency; and in all other cases, the laws themselves should never sanction a violation of private rights, or a departure from the ordinary forms of judicial proceedings. Our Bill of Rights has, therefore, not only affirmed the general doctrine, that the military should always be retained in strict subjection to the civil power; but it also expressly prohibits all laws, which would subject to martial law, any but those in the regular service of the State, or militia men when in actual service, or which would authorise the quartering of any soldier, in time of peace, in any house without the consent of the owner.

(24)

The privilege of discussing freely, and resisting by remonstrance, all public measures, is an essential right of the citizen under every free government. Our Bill of Rights, therefore,

ral Assembly had the power of imposing a general and equal tax for the support of the Christian Religion, reserving the right to every individual of appointing the payment of any such tax collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or of the poor in general of any particular county: but this power is wholly taken away by that amendment.

(23) Bill of Rights, art. 13th.

(24) Bill of Rights, art. 27th, 28th, and 29th.





declares "that the liberty of the press ought to be inviolably preserved:" and guarantees to every citizen, the right of petitioning the legislature for the redress of grievances in a peaceable and orderly manner. (25)

(5) *Those relative to the enactment and publication of laws.*

The manner of originating and passing bills or resolutions, in each House of Assembly, is determined by its rules; which have full control over all that relates to the mere forms of proceeding. The Constitution only prescribes the enacting style of laws, and directs the manner in which they shall be authenticated, published, and recorded. All bills passed by the General Assembly, when engrossed, shall be presented by the Speaker of the House of Delegates, in the Senate chamber, to the Governor, who shall sign the same, and affix thereto the great seal of the State. They are then recorded, and certified to the counties. The original place of record was the General Court office, from which it was transferred, upon the abolition of that court in 1805, to the office of the Court of Appeals for the Western Shore. (26)

(25) Bill of Rights, art. 11th and 38th.

(26) For the speedy and general circulation of the acts, resolutions, and journals of each Assembly, our laws have made the fullest provision. As soon as they are recorded and published, one copy of the acts and resolutions is certified under the great seal of the State, to every county, agreeably to the requisitions of the 60th Article of the Constitution, and the Act of 1715, chapter 25: and the copies thus authenticated, are therefore evidence of all laws, whether private or public. One copy of the laws, and the votes and proceedings of each House, are also annually printed for, and transmitted to, the governor, each member of the executive council, each judge of the courts, the attorney general, register in chancery, each treasurer, each register of wills, each sheriff, the commissioners of the tax and trustees of the poor for each county, and the directors of the penitentiary; one copy of the votes and proceedings to the clerk of the Court of Appeals; and one copy of the laws, and four of the votes and proceedings, to the clerk's office of every county—1790, chap. 51; 1825, chap. 78; Resolution 74th of 1827; 12th of December session, 1828; and 62d of December session, 1829.

The manner of printing them is prescribed by the 64th Resolution of November session, 1811; and the printing is now generally done under contract with the Legislature, upon proposals. Until 1812, the printing was done by a salary officer, who was called the printer to the State, and whose salary was regulated every year by the annual Act for the payment of the civil list;





*The incidental powers of the General Assembly.*

These are powers of appointment and removal, the nature and objects of which will be particularly examined, in connexion with the history of the several offices to which they relate. It will therefore be sufficient, in this place, to denote these offices:

The General Assembly elects, annually, the Governor and Executive Council of Maryland. (27)

It has the power of appointing the Senators to represent this State in the Senate of the United States; but where vacancies occur during its recess, they may be filled, until its assemblage, by the appointment of the governor and council. (28)

It has, virtually, the power of appointing all Registers of Wills, by its right of recommending imperatively to the governor and council, the person to be commissioned: but the latter have the same power of filling vacancies in the recess, as in the preceding instance. (29)

It has also the power of appointing Bank Directors to represent the stock of the State in several of the State Banks. (30)

It may demand the removal of the Attorney General of the State, or of any Judge of any of the county courts; but in cases of the latter kind, the address of the Assembly to the governor, requiring the removal, must be adopted by the votes of two-thirds of all the members of each house. (31)

*The time and place of meeting of the General Assembly.*

The regular sessions of the General Assembly are annual, and commence on the last Monday of December in every year. The

but since that period it has been done by contract at each session, sometimes made by committees of the Legislature, and sometimes by the executive, under the authority of an act or resolution. See *Chandler vs. The State*, 5 Harris and Johnson, 284.

(27) See 2d volume, chapter, "*of the Governor and Council of Maryland.*"

(28) Constitution of U. S. art. 1st, supra 3d, and 2d volume, chapter, "*of the adoption and obligations of the Federal Government.*"

(29) See 2d volume, chapter, "*of the office of Register of Wills.*"

(30) See 2d volume, chapter, "*of the Treasury of the State.*"

(31) See 2d volume, chapters, "*of the office of Attorney General,*" and "*of the County Courts.*"



time of assemblage was originally, the first Monday of November: but in 1812 it was changed to the first Monday of December; and in 1824 to the last Monday of December. (32)

It may also be convened by the Governor, with the advice of his council, at any period, upon giving not less than ten days notice; and where the two houses have adjourned to different days, the Governor may convene the Assembly on either of these days, or any intermediate day. (33)

The sessions of Assembly are held at the city of Annapolis, which has remained *the seat of the State Government*, without any constitutional security for its continuance as such, ever since the adoption of the State Constitution.

(32) Constitution, art. 23d, as amended at first by the acts of 1811, chapter 211, and 1812, chapter 129, and afterwards by the acts of 1823, chapter 111, and 1824, chapter 73.

(33) Constitution, Art. 29.





## CHAPTER XI.

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### THE SEVERAL POWERS OF EACH HOUSE OF ASSEMBLY.

Of the powers and privileges severally possessed by the Senate and the House of Delegates, there are some, which are common in their kind to both, and only several and exclusive in their exercise: and others, which are peculiar to one or the other both in kind and exercise. Those, which are in their kind common to both houses, relate to—(1) Their several organization—(2) The obtention of information for the discharge of their official duties—(3) Their right of self-protection.

(1) *The powers relative to their several organization.*

Each house has the exclusive right to judge of the elections and qualifications of its own members. Each house shall appoint its own officers, and settle its own rules of proceeding. Each house shall choose its presiding officer; who, in the House of Delegates shall be styled "*the Speaker*," and in the Senate "*the President*." In each house, a majority of its members, and its presiding officer, are necessary to make a quorum for any act except that of adjourning. Each house may adjourn itself: but if the two houses adjourn to different days, the governor shall appoint and notify one of those days, or some intermediate day, as the day of meeting: or he may, by the advice of his council, convene the Assembly at any time before the time to which it has been adjourned, upon giving not less than ten days notice: but he cannot prorogue or dissolve it under any other circumstances. Each house may propose to, and receive from the other, bills, resolutions, and other legislative acts: and may assent, dissent, or propose amendments, except as to money bills, which can neither originate in nor be amended by the Senate. (1)

(1) Const. arts. 8th, 9th, 10th, 20th, 21st, 22d, 24th, and 29th.





The propriety of the regulations, relative to the appointment of their officers, the transaction of their business, and the determination of their respective rules of proceeding, is too obvious to require comment. The power of each house to judge of the elections and qualifications of its respective members, is vested in them of necessity. It must exist somewhere. Without it, it would be useless to create qualifications, and prescribe rules of proceeding, in the election of Senators and Delegates: and it could not be vested in the legislature collectively, as it would then conflict with the separate and independent existence of the two houses; and would impair their efficacy as mutual checks, by enabling either to control or affect the organization of the other. In determining upon the qualifications of their members, the houses of Assembly can have but little difficulty. These are so fully and clearly defined, that he who runs may read and apply them. Questions as to the proper conduct of elections, are more embarrassing. The manner of proceeding is, it is true, as well defined as the qualifications: but the difficulties as to the former, consist in determining with what strictness its regulations must be adhered to, and when the non-observance of them will vitiate the election. The competency of the voter, and the authority of the persons holding the elections and receiving the votes, are essential to the validity of the vote. This, as a general proposition, is undeniable: yet doubts often arise from its particular application.

The sufficiency of the authority by which elections have been conducted, has been frequently drawn into question, by cases in which the judges or clerks of election, although properly appointed, did not qualify in the manner required by law, and by defects in the returns of elections. The doctrine of the present day is, that mere omissions or informalities of this kind will not invalidate the election: and that the people shall not be disfranchised, by the neglect of those who are competent to hold the elections. A contrary doctrine would certainly open the door to the grossest frauds, in warmly contested elections: as it would enable those who hold them, by the wilful disregard of their duties, to annul such elections at their pleasure. Defects in returns, especially, should, at all times, be open to amendment according to the fact.



In deciding upon the sufficiency of the vote, doubts often arise, as to the residence of the voter, and the designation by the ballot of the purpose of the vote and the person voted for. When such cases occur, they sometimes give rise to further difficulties in determining the proof admissible and sufficient in them—the admissibility of parol evidence, to prove what the ballot was, or to help out an insufficient designation of its purpose—and the power to compel the voter to testify for whom he did vote, or, in the absence of his testimony, to introduce secondary evidence.

The ballot, agreeably to the requisitions of the act of 1805, must have written, or printed thereon, the name of the person voted for; and it must plainly designate the purpose. Sometimes the ballot does not exactly apply to the person for whom it was intended; sometimes it is ambiguous, and will apply to two or more persons of the same name; and sometimes it appears to apply exclusively to another. In all such cases, without requiring that precise description which is requisite in a declaration or an indictment, the object should be, to discover the intent of the voter, and to effectuate it wherever it can be ascertained with reasonable certainty. It is difficult to lay down any general rules upon this subject. They must often be framed *pro re nata*; and circumstances, which have but little weight in themselves, are often rendered powerful by combination with others. Where the vote can apply only to one eligible person, or only one known as a candidate, there is a reasonable certainty that it was intended for such person. Such was the doctrine of the House of Delegates, in the case of Dashiell, at December session, 1823; and in that of M'Neill, at December session, 1829. As to the purpose of the ballot, the act requires simply, that it shall be plainly designated. The usual mode of designation is by a written or printed heading, setting forth the object; but the act does not appear to render this the exclusive mode. In the case of Travilla, before the House of Delegates, at December session, 1829, it appeared that there were several ballots, which had the heading, "For Congress," and immediately beneath it the name of a gentleman who was a candidate for Congress: and below his name, the names of Travilla and others, separated only by a line. The persons, whose names appeared below this line, were can-





didates for the Assembly when the ballot was given: and the House of Delegates held, that this fact, taken in connexion with the fact that they were not candidates for Congress, made the line a sufficient identification of the purpose. There were but two elections then held: viz., for members of Congress, and members of Assembly. The vote was given with reference to one of these elections. The separation by the line from the name of the person voted for as a candidate for Congress, and the fact that they were not candidates for Congress, but were for the Assembly, were held sufficient to establish, with reasonable certainty, that the vote was given to them for the latter purpose. Where there are no such explanatory circumstances, and more persons are named for any one office than the party had a right to vote for, the ballot as to this is void.

The residence required, is not a continued, uninterrupted residence *in fact*. A mere temporary absence from the State or county, or a sojourn elsewhere, will not deprive the party of his vote. Residence cannot be thus lost. If there be the intention to return, clearly manifested: and it appears, that there was no design to change the residence in going out of the state or county, the person remains, in contemplation of law, a resident, notwithstanding his absence or sojourn elsewhere.—Whilst this intention continues, no length of absence will work a loss of residence: and in ascertaining it, the judges of election may, and do examine, on oath or affirmation, the voter himself; and may also call in aid, his conduct and declarations at the time of going out of the state or county, as furnishing the best illustrations of his intention at that time. (2)

The right to require the voter himself, in contested elections, to disclose his ballot, and the propriety of receiving his testimony, or that of any other person, for that purpose, were much discussed in the case of the Calvert election, at December session, 1819, and of the Annapolis election, at December session, 1828: in each of which cases they were contended for, as necessary to purge the polls. In the first mentioned case, it was solemnly decided by the House of Delegates, that it had the power to coerce any person, who voted at an election, and was proved not

(2) See 2d Harris and Johnson, 388 and 395. 5th Harr. and Johnson, 97.





to be a qualified and legal voter, to give evidence as to the persons for whom he had voted; and after the adoption of an order, predicated upon the testimony taken before the committee of elections, and declaring certain persons therein named to be illegal voters, they were called to the bar of the House, and required to give such evidence. To this they objected, but the House overruled the objections, and some of them were accordingly examined. Others persisted in their refusal, and formally protested against the right of the House to compel their answer; and upon such refusal and protest, no attempt was made to coerce them; but an order was adopted, setting forth their refusal, and admitting evidence of their declarations as to the manner in which they had voted. It cannot be doubted that this proceeding, so far as it asserts the right of the House to compel the illegal voter to give such testimony, was wholly illegal and arbitrary. He is subject to a penalty, and he is expressly exempted, both by the rules of the common law, and the 20th article of the Declaration of Rights, not only from answering any question which might criminate him, but also any which might tend to criminate him, or of which the answer might furnish a link in the chain of testimony against him. To the admissibility of his declarations for the purpose of proving for whom he voted, there is less objection. They would be evidence against him if prosecuted for illegal voting; and if it be proper at all, to enter into such inquiries for the purpose of purging the polls, there is scarcely any other mode in which the House could arrive at the facts. The testimony of some person, who saw the ballot when it was deposited in the box, can rarely, if ever, be obtained. Yet at last, it may well be questioned, whether such modes of scrutiny do not open the door to fraud and perjury. If a person is once established to be an illegal voter, the proof of the manner in which he did vote, can rarely consist of any thing but his testimony or his declarations; and thus it is placed in the power of him, who has once acted fraudulently in giving an illegal vote, to double his fraud by representing the vote as different from what it actually was. He might do this with impunity; for if there be perjury in such a case, it is scarcely possible to detect it. In the Annapolis case, above referred to, it was the received opinion o



the House, that neither the testimony, nor the declarations of the voter, were admissible for this purpose.

In all contested elections, however, the Houses of Assembly prescribe their own rules of decision: yet their discretion in the application of these, must be a wise and sound discretion, which sustains and gives efficacy, as far as possible, to the purity of the elective franchise. They are not fettered by the decisions of antecedent Assemblies: yet such decisions, if well settled, are entitled to respect, and should not be lightly departed from. There are, however, but very few precedents on the journals, which can be adopted as safe guides. Contested elections always occur in times of party excitement; and these contests rarely take place, except in cases where the whole power of the State for the coming year, hangs upon their decision. The prize is then too great to be lost without a struggle; and parties, to secure to themselves the government of the State, will not boggle about the sacrifice of justice to expediency. They generally do not strain at the gnat, and will swallow the camel if it is necessary. They will do collectively, what individually they would consider unjust in the extreme. These are the necessary consequences of party excitement; and they are strikingly illustrated, in some of the cases which have occurred in the House of Delegates. The principal cases of contested elections, which have arisen since the passage of the act of 1805, are, the Allegany case, at December session, 1813, which has been called "the Allegany fraud," and the Calvert case, above alluded to, in 1819. In the first case, the vote of an entire district in Allegany county was rejected, because the presiding judge of election for that district was qualified by another judge, instead of being qualified by a justice of the peace, or one of the clerks of election. The rejection of this vote was necessary, to ensure the election of the federal members, and thereby the election of the governor; and therefore the strict construction of the act of 1805, as to qualification, was contended for and sustained by the decision of the House. This decision has since been virtually overruled in the case of the Queen Anne's election, at December session, 1828, where the votes of a district, which had been rejected by the returning judges, because the clerks of election had been qualified by a justice of the peace, and not by a





judge of election, as the law then required, were received and declared legal by the House of Delegates; and the members, who would have been excluded by their rejection, were accordingly admitted to their seats. The principal decision in the Calvert case, has already been adverted to; but there were some incidental decisions of the House in that case, as to the right to impeach the credibility of witnesses, which are truly extraordinary. These cases have not passed, and are not likely to pass, into precedents: but they teach us forcibly the influence of partisan feelings upon the most honorable minds, in leading whole parties, composed of men of integrity and intelligence, to conclusions directly opposite, upon questions of right.

In the Senate, very few difficulties arise in the exercise of this power. The Senate is not permitted to scrutinize the organization of the electoral college. That body is the sole judge of the elections and qualifications of its own members; and the Senate is limited in its inquiries, to the regularity of the proceedings of the college, and the qualifications of those returned as senators elect. In both houses, the power to inquire into the elections and qualifications of their members, would carry with it, as its incidents, all other powers necessary to its exercise: but, in addition to these, the House of Delegates is clothed, by the 11th article of the Constitution, with the express power to call for all public or official papers, and to send for all persons whom they may judge necessary, in the course of their inquiries relative to public affairs.

The power to adjourn, and the exceptions to that power, rest upon the same reasons, and are in perfect accordance with each other and with the nature of the two houses. Each house should be independent of the other, and of the executive: and hence the exclusive power of each, and the general denial to the Executive of the power to adjourn, prorogue, or dissolve them. Sudden emergencies, not foreseen by the legislature at the time of its adjournment, may require its prompt action: and hence the power to the Governor and Council, to convene it at an earlier day than that to which it stands adjourned. In the exercise of their several powers of adjournment, the two houses may differ. Each may wish to prescribe the time; and each may be unwilling to recede from the ground it has taken. Hence the media-





torial power of the Governor, to convene both houses, on either of the days to which the two houses may severally adjourn, or on any intermediate day.

(2) *The obtention of information.*

Each house of Assembly may require the opinion and advice of the Attorney General of the State, on any matter or subject depending before them; or may call for, and require to be laid before them, the proceedings of the Executive Council. (3) The want of such information is occasional, and these powers are given to meet and supply it. Of the proceedings of the principal State officers, the legislature is informed, by returns made by those officers at stated periods, which render the grant of a power to call for them unnecessary. In some cases these returns are made to the General Assembly, in others only to one branch of it. The duty of the several officers in preparing and transmitting them, will appear hereafter. Besides the common powers above specified, the House of Delegates has certain peculiar powers of this description, which will be considered hereafter.

(3) *Their right of self-protection.*

The right to protect itself and its members in the discharge of their official duties, and to repress all acts of disorder or insult which interrupt or hinder their proceedings, is necessary, to the independent existence, and efficient action of every legislature. Hence, where the powers requisite for this purpose are not expressly granted, they are held to result by necessary implication from the delegation of legislative power, upon the principle, that where a grant is made, it carries with it as inherent every thing necessary to its enjoyment. The power of self-protection, enters into the very existence of a legislature, and is considered so essential, that most constitutions have deemed it inexpedient to define the cases to which it extends, and have preferred to rest it upon an implied right of punishing contempts, which will expand itself to every case of that character, however new in instance. Even the Constitution of the United States, relating to a government of express grant, has not expressly granted this power, so far as it extends to persons not

(3) Const. art. 26th, and Act of 1821, chap. 126.



members; but has left it dependent, both for its existence and extent, upon necessary implication. Our State Constitution has ordered it otherwise. It has not followed the doctrine of other governments, that the *law of privilege* should be concealed in the breast of the legislature, undefined, unknown, and appearing, only when its existence is called for, to define the offence and punish the offender by one and the same act. We proceed to consider the right of self-protection granted by it to each house of Assembly, with reference to its own members or to third persons.

Offences against either house of Assembly, committed by any of its members in the house and during its session, are not particularly defined by the Constitution; nor is there any peculiar power to punish these expressly given, except that of the House of Delegates to expel its members, which will be considered hereafter. There is, indeed, a general authority given to each house, by the 12th article of the Constitution, to punish by imprisonment, any person who shall be guilty of a contempt *in their view*. Each house is also empowered, by the 24th article, to prescribe its own rules of proceeding; and it has, therefore, the right to regulate the demeanor of its members, and to punish every departure from the decorum which its rules prescribe. Hence the rules adopted by each house for its government, contain a variety of regulations, prescribing, in the most definite terms, the conduct and demeanor of its members, and carrying with them the express power to restrain or punish, by censure or fine, all misdemeanors which shall be committed in such house; and they confer also upon the Speaker or President, the general power to call to order. As to the offences consisting in acts done without the house, which are defined by the 12th article, the prohibition and the power of punishment appear to extend, as well to members, as to others. The privileges of the house are as much invaded by such acts, when committed by its members, as if done by other persons; and the consequences are the same. In such cases, the rules of the house cease to operate, and it is therefore remitted to its general power, in the punishment of such contempts by its members, not committed in its view, nor whilst in the discharge of their official duties. Where acts are done by a member out of the house, and not in





his official capacity, nor falling within the prohibitions above mentioned, the house has no more control over him than over persons not members.

Having seen, that the members of each house are subject to its rules, and also to the general prohibitions of the 12th article, it will be proper to consider these prohibitions, before we inquire into their power to punish either members or third persons, for any act not falling within them. Offences of third persons, which are specified by the 12th article, as *breaches of privilege*, or *contempts of either house*, consist—in contempts in the view of such house, by any disorderly or riotous behaviour, or by threats to or abuse of its members, or by any obstruction of its proceedings—and in breaches of privilege, by arrests of or assaults upon members, assaults upon or obstructions of officers in service of process, assaults or obstructions of witnesses or other persons in attendance upon such house, or on their way to or from it, or rescues of persons committed by it. Such being the offences, they are punishable by imprisonment alone; and that imprisonment will endure only during the session of the legislature. “The existence of the power that imprisons, (says the Supreme Court of the United States,) is indispensable to its continuance; and although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows that imprisonment must terminate with that adjournment.” (4)

The implied power to punish for contempts and breaches of privilege, extends beyond these enumerated cases. That of the two houses of Congress, which is an implied power, has been held to extend to all attempts to corrupt the integrity of their members, to challenges given to a member, and to libels or slanderous imputations upon such houses. (5) Whatever may be the extent of the implied power, such implication always gives way to an express grant, upon the well known

(4) *Anderson vs. Dunn*, 6th Wheaton.

(5) See the cases of *Randall & Whitney*, in 1795; the case of another (whose name is not recollected,) in 1796, for giving a challenge; *Duane's* case in 1800; and the celebrated case of *John Anderson*, in January, 1818. The Congressional proceedings in connection with the last mentioned case may be seen in the 13th vol. of *Niles' Register*.





maxim, "*expressio unius est exclusio alterius.*" Had the State constitution been silent about this power, it would have been implied, as under the Constitution of the United States, and to an extent limited only by its proper objects. But it has undertaken to define the power, to describe the cases to which it shall extend, and to prescribe the punishment; and it is therefore the inference of law as well as of reason, that when it defined the cases to which it should extend, it virtually declared that it should extend to no other. If the general power was intended to be conferred, it was perfectly absurd to grant it expressly, in these cases of the most obvious kind, and about which there was no difficulty. The 12th article, in affirming the power of the two houses, as to contempts and breaches of privilege, in particular cases, must therefore be considered as negative and exclusive of their power in all other cases.

There are but three or four instances of proceedings for contempts or breaches of privilege, upon the journals of the House of Delegates: and there is scarcely one which will bear the test of this conclusion, or appears to have been warranted by their constitutional power. The case of Hindman, which occurred in 1780, and that of O'Neale, in 1794, were cases of members.—The case of Swailes was one of expulsion, which will be considered when we treat of that peculiar power of the House of Delegates. Hindman was a delegate from Talbot, who was charged with having spoken very disrespectfully of the Speaker of the house and certain members, because of their vote against a particular proposition. The words were spoken out of the house, and upon the question being put as to the power of the house to take cognizance of them, it was affirmed by an immense majority. Upon consideration of his case, the house directed that he should be reprimanded, and required him to ask the pardon of the house, the Speaker, and the particular members reflected upon. He did accordingly ask the pardon of the house and the Speaker, but refused to ask it of the particular members, and denied the right of the house to require this, in a protest of remarkable force and perspicuity. His objection was not sustained; and he was accordingly committed to and remained in the custody of the Sergeant-at-arms



for several days. O'Neale was a delegate from Montgomery county, in 1794; when a petition was presented to the house, by a citizen of Prince George's county, praying for a law to authorize the issuing of a patent on a survey of lands in that county, because of the loss of the original record of the patent.— Having thus obtained a knowledge of this loss, O'Neale applied to the land office for a warrant of proclamation to affect these lands: and for this act a motion for his expulsion was submitted to the house. He was defended by the distinguished William Pinkney, through whose exertions the motion was rejected; but an order of disapprobation was adopted, by an almost unanimous vote.

Both of these cases were clearly without the rules of the house, and the provisions of the 12th section: and it would be difficult to sustain powers of this kind, without converting the house into a mere court of honor, to protect the character of its members against out-of-door conversation, or a censorship over their private character and their private and unofficial acts. The proceedings in cases of contempt, are arbitrary in their nature, and should not be extended beyond the actual necessity for the power. They dispense with the ordinary safeguards of a grand and petit jury in criminal cases; and they define the offence and punish the offender by the same act. Our Constitution was jealous of the exercise of such a power; and in affirming it, as to cases of contempt in view of the house, and the more flagrant breaches of privilege, which are of such a nature as to require a speedy interposition, it intended to remit all other cases to the courts, as the best and safest tribunals for the investigation of the offence, and the infliction of the punishment.

*The peculiar powers of the two Houses.*

The powers which fall under this head are not only exclusive in their exercise, but also peculiar in their kind to one of the houses of Assembly. Of this description of powers, the only one of importance belonging to the Senate, is that of filling vacancies in its own body, which has already been considered. The exclusive and peculiar powers of the House of Delegates relate to, (1) Money bills—(2) The expulsion of its members—(3) Its capacities as the Grand Inquest of the State—(4) Its control over





the revenue of the State—(5) Its means of information as to public or official proceedings.

(1) *Money Bills.*

The House of Delegates has the peculiar and exclusive power of originating and amending money bills. This privilege is so familiar to us from its incorporation with our own, and with all the forms of government around, that we are apt to look upon it as inherent in the very nature of our institutions; yet, upon closer examination, it will be found that it does not bear so natural and necessary a relation to them; and that it has been derived from a constitution, which gave it for reasons not applicable to our legislature. The exclusive power of the British House of Commons as to money bills, is the source of the correspondent power in all our constitutions. Various reasons for its existence in that body, have been assigned by writers on the English constitution. The only true reason is, that the House of Lords is not a representation of the people; that its members sit in their own communicable right, and not in a representative capacity; and that they derive this right from the crown and not from the people. It is a singular fact, that the House of Commons in its infancy, grew up under the nurturing care of the English kings, by whom it was fostered, and advanced, as a check upon the power and arrogance of the nobility. Thus arising, the Commons claimed the exclusive power of taxing those by whom they were delegated; and the House of Lords, a similar power as to the members of their own body: and for a short period, these peculiar powers of taxation were claimed and exercised by both Houses. When the separate powers were blended into one, to be concurrently exercised by the two Houses: the right of originating and amending money bills, was vested exclusively in the House of Commons as a bonus for the union. Since that period, an entire change has been effected in the general character of the House of Commons. It was originally the instrument of the crown, to repel the aggressions and curb the insubordination of the Lords. The reason assigned by Blackstone for the exclusive right, will not, therefore, apply to its original character. It was not then denied to the House of Lords, "because (to use his language,) it was a permanent, hereditary body, whose members were created at the pleasure of the





crown, and were therefore supposed to be more liable to its influence." The House of Commons was then more under the dominion of the crown, than the House of Lords: and there is every reason to believe, that the king connived at this assumption of power by the Commons, because he had more to hope from its liberality than from that of the other House. He could soothe, flatter, and make promises to his "faithful Commons:" by whom, in their almost unfledged state of freedom, these attentions would be much more highly appreciated, than by sturdy nobles who were disposed to regard themselves as his equals. Blackstone's reason may sustain and justify the power at this day: but it does not direct us to its true source, which is to be found, not in abstract principles, but in the circumstances of the times in which it originated. In our constitution it was adopted for different reasons. With us, both branches of the Legislature represent the people, both spring from them, both are responsible to them, and both return to them to account for the deeds of their office. But the House of Delegates comes more immediately from the people, and hence it is presumed to have a more perfect knowledge of their present condition and immediate wants. It is more numerous than the Senate, it contains distinct representations of all the counties, and, from the number of its members, and the manner in which they are elected, men of more various pursuits and employments in life, and possessing more of the information so essential to the proper exercise of the taxing power. Hence it is presumed to be more capable of devising plans of revenue, which will operate equally and justly upon all sections of the State, and all classes of its inhabitants; will adapt themselves to the exigencies of the moment; and will open the richest sources of State wealth. Its members are elected for a much shorter period than those of the Senate, and are more speedily responsible: and hence it is presumed, that they will look more carefully to the impartial exercise of the power.

Our State Constitution carries this privilege further than the Constitution of the United States: under which the Senate, although it cannot originate, may yet amend money bills. This power of amendment being denied to the State Senate, it was necessary to guard against the possible abuses of the exclusive power of the House of Delegates; by an exact specification of



the characteristics of money bills; and by inhibiting that House from covering under such bills, propositions of a different nature, so as to shield them from the amending power of the Senate. Our Constitution foresaw and provided for this necessity. Its 11th article expressly declares, that none shall be considered *money bills*, but bills assessing, levying, or applying taxes, or supplies, for the support of government or the current expenses of the State; and bills appropriating money in the treasury. Bills imposing customs or duties for the mere regulation of commerce, or inflicting fines for the reformation of morals, from which revenue may incidentally arise, are expressly declared not to be money bills. It also inhibits the House of Delegates from annexing to, or blending with, a money bill, any matter, clause, or thing, not immediately relating to, and necessary for imposing, assessing, levying, or applying the taxes or supplies to be raised for the support of government.

(2) *The expulsion of its Members.*

The House of Delegates may expel any of its members for a great misdemeanor, but not a second time for the same cause.

(5) The Senate is very wisely deprived of this power, for reasons apparent from its constitution. It fills all vacancies occurring in its own body; and if it were invested with such a power, it would enable a cabal in the Senate to expel members, merely for the purpose of filling their places with others better suited to their purposes; and would put the independence of that body at their feet. It is a dangerous power, even when deposited in the House of Delegates, whose members act under so direct a responsibility, and where the vacancies are filled by those who elected the member expelled. It is not a mere punitive power, which terminates in its consequences to the party expelled. By removing him from office, it disfranchises, or at least leaves unrepresented for a time, the people who have delegated him; and it was intended to be exercised, only for reasons and objections unknown to them when their choice is made. This is manifest, from the restriction denying the right to expel the party again for the same cause, if the people choose to re-elect him. Under the Constitution of the United States,





the power to expel is conferred upon both Houses of Congress, but can only be exercised by either House with the concurrence of two-thirds of its members. There the power is given generally; but, under our Constitution, the House of Delegates is restricted to cases of great misdemeanor. Hence the instance, in which it has been claimed by either House of Congress, cannot be used to define its extent, under our Constitution. Three cases have occurred in the Senate of the United States, which were much discussed, and may be usefully consulted, in ascertaining the proper nature of such power, and the mode of proceeding in its exercise. They are the cases of Marshall, in 1796; of Blount, in 1797; and of John Smith, in 1807. They appear to establish the doctrine, that where the cause of expulsion consists in an indictable offence, it is not necessary that the party should first be convicted of it in a court of law, before expulsion can take place. In the case of Marshall, the Senate decided otherwise; but the cases of Blount and Smith, and indeed the whole force of the reasoning founded on the nature and necessity of the power, appear to warrant expulsion for such a cause without any previous conviction. But there are other doctrines maintained by the report of the Committee of the Senate in the case of Smith, applicable as well to expulsions by our House of Delegates, as by that body, which are of the most dangerous character, and which, we would fain hope, will never be drawn into precedent in our State. Smith was charged with participation in the Burr conspiracy, and was indicted for it: but a *nolle prosequi* was entered upon the indictment, in consequence of the acquittal of Burr. Under these circumstances, that report maintains, that notwithstanding his discharge, he was subject to expulsion, if the Senate believed him guilty: that when a committee is raised for the purpose of investigating the charge, and reporting to the Senate the facts of the case, such committee is in the nature of the grand jury, and the member is not entitled to a defence before it by counsel, nor to have compulsory process for his witnesses, nor to be confronted with his accusers, but is remitted to the Senate as the proper place for defence: that the Senate in exercising this power, is not bound by judicial forms or the rules of legal evi-





dence; and that the same degree of proof is not necessary for expulsion, which would be requisite to convict the party in a court of law of the offence charged. Such doctrines as these, dispensing with all the defences of the citizen in criminal prosecutions, and letting in every thing that may be called evidence, without regard to the legal rules as to its admissibility so admirably calculated to test its truth and relevancy, and in a prosecution which is not only to dishonor the citizen for ever, but to deprive his State, for a time, of half her voice and influence in the Senate, do not suit the meridian of our Constitution.

The power of the House of Delegates being limited to *misdemeanors*, the import of that word as a technical term, appears to restrict it to acts constituting a legal offence; and in requiring that they should be great misdemeanors, the Constitution evidently refers only to such offences as carry with them a high degree of moral turpitude. The term "misdemeanor," in its proper acceptation, will exclude all cases of the violation of imperfect or mere moral duties, or in other words, all but criminal offences known as such to our laws. Mere immoralities not punishable by law, do not fall within it. In this view of it, the only case which has occurred of expulsion by the House of Delegates, was not warranted by its constitutional power. This was the case of Swailes, a delegate from Montgomery county, in 1797, who was convicted and expelled on the charge of having defrauded a certain Henry Crist at gaming, by the use of marked cards. Base as was the conduct imputed by this accusation, it was a mere private, unofficial act, which did indeed involve extreme moral turpitude, but did not fall within the legal acceptation of the word "misdemeanor." It would, perhaps, at this day, be held to be a case of constructive larceny, and in this point of view, it would be a cause of expulsion. But the House appears to have considered it, and to have punished it, merely as a grossly immoral and ungentlemanly act; and as such, however sufficient it was to exclude him from their society, it was no constitutional cause of expulsion from the House. In the particular instance, it appears to have been richly merited; but if drawn into a precedent, there is scarcely any point at which this power would stop. It would throw open to it all the private conduct of the member; and the House would sit as mere censor



*morum*, to punish the thousand peccadillos of its members. There are times, when this duty would be no sinecure.

(13) *Its capacities as the Grand Inquest of the State.*

The House of Delegates is the Grand Inquest of the State; and as such, may enquire into all complaints, grievances, and offences whatsoever; may call and examine witnesses in relation thereto; and may commit any person for any crime, to the public gaol, to remain there until discharged in due course of law. (8)

(4) *Its control over the revenue of the State.*

The House of Delegates has the exclusive power of appointing the Treasurer of the State; but where vacancies occur in the recess, they may be filled, until the meeting of the Assembly, by the appointment of the Governor and Council. It may also examine and pass all accounts of the State, relative to the collection and expenditure of State revenue; or appoint auditors to state and adjust them; and in the investigation of these, as well as of all other proper subjects for its inquiry, it may call for all public or official papers and records, and send for all persons whose presence it may deem necessary. (9)

(8) Constitution, art. 10th.

(9) Constitution, art. 10th. See 2d vol. chapter, "*of the Treasury of the State*," where the causes, nature, and past exercise of these powers are fully examined.





## CHAPTER XII.

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### THE PRIVILEGES AND DISABILITIES OF MEMBERS OF ASSEMBLY.

THE privileges and disabilities of the members of Assembly are such as are necessarily incident to their office, or are expressly connected with it for the purpose of securing its purity and efficiency. They are not mere personal privileges, which the member may claim or waive, or disabilities of which he may relieve himself, at his pleasure. His official privileges are not his, but those of the people whom he represents; and his waiver or surrender of them cannot deprive his constituents of the right to enforce their observance. His disabilities modify and restrict his agency, and he can no more relieve himself from their operation, than can he who accepts a qualified agency convert it into one unqualified. These general considerations at once indicate the nature and objects of these privileges and disabilities, and determine their extent. They shew us why it is, that the privileges of the member are protected, and infractions of them punished by the house to which he belongs. The house is the organ of the people, and as such protects the privileges of the people's agent. In the preceding chapter, we have seen the power of the houses to protect themselves and their members. We are now to consider the privileges and disabilities of the members, solely with reference to themselves; and this will of course exclude those, which, although they relate to the members, are yet only the privilege of the houses.

It is to be regretted that the same precision, with which the powers of the houses are defined, was not observed as to the privileges of the members. The latter have been suffered to rest upon implication. The doctrine of Judge Blackstone, "that the dignity and independence of the legislature can only be pre-





served by keeping its privileges indefinite," is not sustained even by the annotators on his work: and if we examine the reasons upon which he has founded it, we discover that, whatever their force in England, they do not apply to our government. The privileges of the English parliament are given, not merely to protect its members in the discharge of their public duties, from unwarrantable interruptions by their fellow subjects, but also to preserve its independence against the aggressions of the crown: and hence it is feared, that if they were once minutely defined, it would be easy for the crown to devise some mode of violating them, not falling within the defined cases. The expansive nature of parliamentary privilege has therefore been considered as its only effectual security: and the manner in which the English Parliament has obtained its privileges, gives great force to the doctrine, as applied to that body. They have all been extorted, and were originally regarded as encroachments. To use the language of Mr. Jefferson, "they have been advancing for centuries with a firm and never yielding pace. Claims have been brought forward from time to time, and repeated until some example of their admission enabled them to build law on that admission." There may, therefore, be some show of reason in this doctrine, as applied to the English parliament; but there is none, in reference to our constitution. The Executive here is the mere dependant of the Legislature; and has neither the will nor the power to encroach upon its liberties. Hence, as all rules of action in republican governments, they should be expressly granted and well defined.

The common privileges of the members of Assembly consist in—(1) Exemption from legal process in certain cases—(2) Freedom of debate—(3) Exemption from military duty, and from service as jurors.

(1) *Their exemption from legal process.*

This exemption is not expressly granted by any part of our Constitution or laws. The 12th section of the Constitution empowers each house of Assembly to punish by imprisonment, any person guilty of a breach of privilege, by arresting on civil process any of its members, during its session, or whilst they are on their way to or from it. This power, of itself, operates as a grant of privilege to that extent: but does it also operate as a restric-



tion of it to the cases in which the house may punish? It is certain, that if our Constitution had been silent as to this privilege, it would yet have existed as the necessary incident of the office. It results from it because it is necessary to its exercise; and if it were denied, a state of things might be imagined, in which, for the promotion of private interests, or the gratification of individual feeling, the business of legislation would be wholly suspended. Although it would require an extraordinary concurrence of circumstances to produce such a result, yet even the possibility of it must be guarded against, when fraught with such alarming consequences. The arrest and detention of a single member, is the loss of his vote and influence on behalf of those whom he represents. Hence the privilege has arisen, and it has been held to extend, by implication, not merely to ordinary legislatures, but also to extraordinary legislative assemblies, such as conventions to reform or adopt constitutions. (1)

Yet, although it would arise by necessary implication, it is equally true, that where there is an express grant, the implication ceases, and the grant operates as a denial of all not granted: and it therefore only remains to inquire, whether the grant of the power to punish in these defined cases produces the same effect, as would an express grant of privilege limited to them. If so, the only exemption of the member from legal process, relates to arrests *eundo, redeundo, et morando*. It is true that in general the privilege of the member is the privilege of the House; but the 12th section relates only to the power to punish. The privilege, or the infractions of it, may not be of such a nature as to require the interposition of the House. The member may be summoned as a witness, or as a party to a suit: and although the service of the summons may violate his privilege, yet, as it is not compulsory until followed up by attachment, it is unnecessary for the House to interfere until the attachment comes. He may be arrested on civil process before the meeting of the Assembly, and detained in custody after its session commences. In such cases as the latter, the original arrest is legal, and the House has no power to

(1) 1st. Dallas's Rep. 297.





punish : yet, after the session commences, the consequences and mischiefs are the same as if the member were arrested during the session. This is a case without the strict letter of the Constitution ; and if the privilege is thus limited, the member might remain in custody. These possible cases lead us to the inference, that the power of the Houses to punish exists only to reach the extreme and urgent cases : and that it does not necessarily limit this privilege, but leaves us at liberty to give to it the latitude, which reason and precedent indicate as essential to the proper exercise of the office.

The privilege does not, and never should extend, to exemption from *criminal* process of any kind. In such cases, public interests are in conflict ; and the superior interest of society, is that which is maintained by the punishment of the member for offences against its security, peace, or good order. He has, therefore, no privilege : and the only privilege of the House is its right to be informed of his detention, and of the causes of it. (2)

In *civil* cases, there is some contrariety of opinion as to its extent. As it existed in England about the commencement of the eighteenth century, it exempted members of Parliament not only from arrest, but also from the service of any legal process in civil cases, during the time of privilege. It has been so restricted by various statutes, that it now merely exempts from arrest on civil process : and leaves them subject to all process not requiring an arrest. But the abuses which occasioned this restriction in England, could never flow from the privilege in this State. The original exemption of members of Parliament, almost operated as a perpetual bar to all civil process against them. The duration of the Parliament then depended upon the pleasure of the king : and the privilege subsisted for such a time after its prorogation or adjournment, and before its re-assemblage, as generally to cover the whole interval between its sessions. But here it operates only during the session of Assembly, and the time necessary in going and returning from it, which never exceeds three months. This temporary suspension of private right, cannot be put in competition with the public inconvenience which might arise from subjecting the member to civil process, even where it did not occasion an

(2) 1st Black, 169 ; Jefferson's Manual, 25.





arrest. Privilege is odious, only when it confers a personal right for personal advantage : but where it exists for the public benefit, it is but the result of the acknowledged doctrine, "that the safety of the people is the supreme law." In this instance it is established, that private interests may not interfere with legislation : and that the member, during the incumbency of his public duties, may not be forced away from them by private obligations. By the acceptance of the office, he has consented to abandon his private concerns, during his attendance in Assembly : and the privilege, therefore, comes in to prevent a clashing between his public duties and his private interests. To obviate this, regard must be had as well to moral as to physical necessities. The member who is actually under arrest, may not be more imperatively called away from his public duties, than he against whom suits are instituted, or upon whom process is served not occasioning arrest. In the State of Pennsylvania, this necessity has been considered sufficient to establish the doctrine, "that a member of Assembly is not only exempt from all civil process ; but that even suits, to which he is a party, cannot be forced to trial during its session." (3) This, perhaps, carries the privilege too far : but, both upon reason and authority, it seems to extend in this State, to exemption not only from arrest, but also from all process which, if disobeyed, may be enforced by arrest, such as a subpoena to testify, or a subpoena from Chancery. (4) It seems also to reach all cases of arrests before the session of Assembly, so as to release the member from custody when the session commences, and in time to attend it. (5) It is scarcely necessary to remark, that it endures not only during the session, but also for such time as may be deemed reasonable, under the circumstances of each case, for going to and returning from it. Arrests of members during the time of privilege, are absolutely void : and the member so arrested, or detained in custody under an arrest before the time of privilege, may be released, upon motion to the Court out of which

(3) 4th Dallas, 107.

(4) See Jefferson's Manual, 17, but see contra, opinion of Judge Chase, in 4th Dallas, 341.

(5) Jefferson's Manual, 13. See, however, 16th Viner's Abridgment, tit. Parliament, pl. B. and 5th Wilson's Bacon's Abridg't, 631, which seem to establish the position, that members arrested, or in execution, before their election, shall not have privilege. See also 3d Dallas, 478.



the process issued, or by habeas corpus, or by the order of the House of which he is a member. (6)

(2) *Freedom of debate.*

This privilege, so essential to the independence of the Legislature, and the free and full discussion of all questions which may arise in it, is protected in all its proper extent by the 8th article of our Bill of Rights, which declares "that freedom of speech, and debates or proceedings in the legislature, ought not to be impeached in any *other* court or judicature."

(3) *The exemption from military duty, and from service as jurors.*

The members of Assembly, during its session, are exempt from service as jurors, and also from attendance on military parades: yet they are still liable to draughts for actual service. (7)

*The Disabilities of Members of Assembly.*

The members of either House of Assembly, *if they qualify as such*, are expressly inhibited from holding any office or place of profit under the State Government, or receiving directly or indirectly, the profits, or any part of the profits of any office exercised by any other person, during the time for which they are respectively elected. They are also prohibited from taking a seat in the Congress of the United States; accepting any office of profit or trust under the government of the United States, or that of any of the States; or receiving any present from any foreign power or State, or from the United States, or any of the States, without the approbation of this State, through its Assembly. (8)

There are other disabilities under the 37th Article of the Constitution, which are *now* inoperative. It incapacitates for a seat

(6) 2d Strange, 985, 1st Johnson's cases in Sup. Court of N. Y. 415. Const. of Maryland, art. 12th. See also 5th Wilson's Bacon's Abridg't, 637, which seems to be against the power of the House to discharge by its order: yet I apprehend there can be no doubt as to its existence here, in all cases designated as contempts, by the 12th article of the Constitution.

(7) 1715, chap. 37, sec 4th, and acts of 1811, chap. 182, sections 1st and 12th—June, 1812, chap. 9th, and 1822, chap. 188. Yet, under the latter Acts, their exemption even from military parades must be purchased by the payment of three dollars annually, except in the city of Baltimore, they falling within the class of persons described by the 12th section of the Act, as persons exempt only by that Act.

(8) Constitution, art. 37th as amended by Act of 1791, chap. 80, 38th and 39th; and 32d art. of Bill of Rights.





in the General Assembly, all persons receiving the profits, or any part of the profits, arising from any agency for the supply of clothing or provisions for the army or navy, or holding any employment in the regular land or marine service of the State. These incapacities not only render those subject to them, incapable of taking seats in either House before their removal, but they also vacate the office when they attach upon members after election and qualification. Yet since the adoption of the Federal Constitution, the national defence has been entrusted to the national government; and the several States have been prohibited from keeping up troops or ships of war in time of peace, or engaging in war, unless actually invaded, without the consent of Congress; so that the regular forces of the State, although they may always be revived in a state of war, do not now exist. The prohibited participation in contracts for supplies, manifestly refers to the regular army and navy of the State, and can only operate when these are in existence.

No doubts have arisen, or can arise, as to the existing and operative disabilities above alluded to, except that excluding from State offices of profit. The terms and purposes of the latter exclusion, appear to be as definite, as those of the former: yet they have been involved in some obscurity, by the mysticism of modern days. Many exceptions have already been engrafted upon it by construction, and others have been contended for, which, if established, would leave it but little efficacy. Like other provisions of our Constitution, as plain and specific as language can make them, it has been innovated upon by subtle constructions, always striving to escape from the express letter of the Constitution, by taking refuge under some imagined intention of its framers. This is what is termed, in modern phrase, or at least in a modern application of the phrase, "*construing the Constitution by its spirit.*" Ingenuity thus released from the obvious import of language, is left free to range through the wide field of imaginary intentions; and the Constitution becomes, a problem to be solved in each mind by the intents best adapted to its wishes, or a species of cypher for which every man has his own key. The result has been, that constitutional pyrrhonism has become very fashionable, as it were for its very novelty, and has therefore not scrupled to draw into doubt,





the plainest provisions of our form of government. Yet what renders still more extraordinary these constructions of the Constitution by its spirit against its letter, they all proceed upon one general principle, entirely inapplicable to the nature of the instrument they would explain. They seem to regard it as a system of harsh and odious restrictions upon the people, and their representatives, which ought to be construed as narrowly as possible; and from which every case ought to be excepted, that in its particular circumstances does not, *in fact*, bring with it the mischiefs intended to be suppressed. Yet this constitution is one of the people's choice, is at all times open to amendment by them, and by their will restricts men in authority so as to guard against all possible abuses of power; and, as such, it should have full and liberal operation; not that operation, which waits for the *actual* occurrence of abuses, but that which lies at the threshold to prevent the possibility of their entrance.

In reference to the disability we are now considering, it was certainly competent to the framers of the Constitution to have given it the widest range, not only over all State offices then in existence, but also over all which might thereafter be established; and such seems to have been their purpose. We find the reasons for this widely extended restriction, in the nature of the executive, which is the creature of the legislature: and it certainly would be more consonant both with the spirit and letter of the Constitution, to consider members of Assembly as excluded by it from all offices in the gift of the Governor and Council, or of the Assembly. Yet in practice, it has received a much narrower construction, excluding from its operation all offices of a local and subordinate character, which have been established, since the formation of the Constitution, by acts of Assembly. The general principle of this usage cannot be better stated than in the language of Mr. Pinkney: "Accordingly (says he) it is known to every body in any degree acquainted with public affairs in Maryland, that the 37th section of the Constitution has never been extended, *by usage*, to subordinate and local employments, neither mentioned in the Constitution, nor adopted in the Provincial establishments from the common law, and continued under the new government as essential means for the general administration of justice, the col-



lection of the public revenue, or the management of the general concerns of the community; and that every subordinate and local employment, which owed its creation to Acts of Assembly passed subsequently to the Constitution, has, in practice, been held to be out of the contemplation of the convention, and therefore out of the purview of the Constitution." (9) The usage, as interpreted by Mr. Martin, has also exempted from the operation of this article, all offices of whatever character, whose compensation consists in a *per diem* allowance, "which (says he,) has never been considered as constituting an office of profit;" and hence in an opinion given by him to the Governor and Council, (whilst he was Attorney General) he held that the members of Assembly were capable of holding the office of judge of the Orphans Court, although he regarded those judges "as regular constitutional officers of the government, forming a constituent part of its system, and introduced to supply the place of the commissary general." (10) Yet all these are usages "more honored in the breach than in the observance." The appointments which they would exempt, spring from the same source with those acknowledged to be within the disqualification; and the discrimination they establish, is founded merely upon the *quantum* of temptation. There is no warrant in the Constitution for any such distinction, nor is there any general rule to determine the exact degree of temptation which might influence. Mere local offices, which seem minor to some, have yet charms enough to seduce others from duty; and the *per diem* allowance incident to a public station, not only renders it, in legal acceptance, an office of profit, but in fact often brings with it more *actual* profit than regular salaries. Such distinctions are mere evasions of the general restriction, and cannot be too soon abandoned. The departure from them will work no prejudice, will impair no rights, and will place the legislator where he should be, not only beyond temptation, but above suspicion.

(9) See the Opinion of Mr. Pinkney, upon the question of Mr. Kell's eligibility as a member of the House of Delegates, whilst holding the office of Commissioner of Insolvent Debtors for the city of Baltimore.

*In Council Chamber Records.*

(10) Opinion of Luther Martin (when Attorney General) upon certain queries propounded to him by the Governor and Council, on the 22d January, 1819.—*In Council Chamber Records.*





Attempts have been made to render even the high offices of Governor and Executive Council, offices filled by the appointment of the members themselves, an exception to this general restriction. These have been predicated upon the language of the 7th and 19th articles of the Constitution, which enumerate the election of a Senator or Delegate as governor or member of the council, amongst the modes by which vacancies may arise in either House; and hence it has been contended, that these articles, by necessary implication, create the eligibility which they pre-suppose. We shall examine this doctrine more particularly, in treating of the supreme executive power. It will suffice here to remark, that under the 37th article, as it stood in the original draught of the Constitution, members of Assembly were excluded from other offices, only during the time of their *actual* service as members; and that when the 37th article was amended by the Convention, so as to extend the disqualification over the whole term for which the member was elected, no change was made in the preceding articles. (11) Hence might have arisen some incongruity between these articles; but in fact there is none. The 37th article operates only after the qualification of the member, and the 7th and 19th articles are fully gratified by his eligibility as to other offices, after election, and before qualification. It is surprising that there ever should have been any doubts upon the question "whether members were eligible to these offices," inasmuch as it was solemnly decided, by the almost unanimous vote of the first House of Delegates assembled under the State Constitution, and in reference to the election of the first governor of Maryland, that they were ineligible. (12) Yet in 1825, the question was again agitated in this State, and much of its talent and influence was enlisted in defence of these alleged exceptions: yet all the parties to the discussion which ensued, appear to have been unaware of the decision in 1777. It was

(11) Journals of the Convention of 3d and 5th of November, 1776.

(12) It was decided by a vote of 39 to 7, that they were ineligible to the office of Governor; but there was a larger vote in favor of their eligibility to the office of councillor. It seems singular, that these votes should have been different, relating as they did, *in fact*, to the same question. Many of the members by whom these decisions were made, were members of the Convention that adopted the Constitution; and hence, as precedents, the decisions are entitled to the highest respect.





therefore brought before the House of Delegates, as a *new question*, at December session, 1825, when it was again decided by a large majority, that these offices were embraced by the 37th article, and that members of Assembly were therefore ineligible to them. It is then to be hoped, that the question may now be considered as for ever at rest.

The sanctions which sustain these disabilities, are of the most effective character. The member is precluded, by his oath of office, from holding any other office of profit embraced by the 37th article, or receiving any part of its profits; and if he violates this restriction, he is guilty of perjury, and upon conviction of it, his seat is vacated, and he shall either suffer the punishment allotted to wilful and corrupt perjury, or be banished for ever from the State, or for ever disqualified from holding any office or place of profit and trust under the State, as the Court may adjudge. (13) If the member shall take a seat in Congress, or accept of an office of profit or trust under the United States; or being elected to Congress, or appointed to such office of profit or trust, he does not resign his seat in Congress, or office under the United States, within thirty days after notice of his election or appointment, his office as State Senator or Delegate becomes vacant. (14)

(13) Constitution, art. 39. The amendment of the constitutional oaths in 1823, by the Act of 1822, chap. 204, has, in *terms*, repealed every part of the constitution, that *relates* to the oaths of members; yet it was not intended, and would be scarcely be held to have repealed, these alternative punishments.

(14) Constitution, as amended by act of 1791, chap. 80.

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